IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

UNION OIL COMPANY OF CALIFORNIA, ET AL.,
Appellants,

versus

RALPH P. EAGERTON, JR., ETC.,
Appellee,

ON APPEAL FROM THE SUPREME COURT
OF ALABAMA

I.

Question Presented on Appeal

Whether that portion of 1980 Alabama Acts, No. 80-708, which levies a 2% increase in tax on all oil and gas produced or severed in the state, including the royalty interest, but exempts royalty owners from payment of the increase in tax (thus requiring non-royalty owners to bear the entire 2% tax increase, including that portion levied on the royalty interest) violates the Equal Protection Clause of the fourteenth amendment.[1]

II.

List of All Parties to the Proceeding in the Court Whose Judgment Is Sought to be Reviewed.

Union Oil Company of California, Getty Oil Company,

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[1] Precisely the same issue was presented and is before this Court in consolidated cases *Exxon Corporation vs. Ralph P. Eagerton, Jr.*, Case No. 80-1020 and *Exchange Oil and Gas Corporation vs. Ralph P. Eagerton, Jr.*, Case No. 80-1268.

Exchange Oil and Gas Corporation, Phillips Petroleum Corporation, Placid Refining Company, Inc., Exxon Corporation, Louisiana Land and Exploration Company, and Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama. [2]

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[2] For Appellants' parent companies, subsidiaries and affiliates, see Appendix J.

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V.

Opinions Below

The opinion of the Supreme Court of Alabama which is sought to be reviewed was entered on December 10, 1982. This opinion appears in the official reports for Alabama at 426 So. 2d 814 (Ala. 1982), and it is included herein as Appendix A. The orders of the trial court, the Circuit Court of Montgomery County, Alabama, do not appear in any official or unofficial report, but they are included herein as Appendix D.

VI.

Statement of Grounds on which Jurisdiction of this Court is Invoked

Appellee obtained a declaration from the Circuit Court of Montgomery County, Alabama, that 1980 Ala. Acts, No. 80-708 did not violate the Equal Protection Clause of the United States Constitution. The Supreme Court of Alabama, on December 10, 1982, affirmed. *Union Oil Company of California v. Eagerton*, 426 So. 2d 814 (Ala. 1982). A timely Petition for Rehearing was filed, and the Petition was denied on February 11, 1982. A Notice of Appeal to the United States Supreme Court was timely filed with the Supreme Court of Alabama on May 2, 1983, and the Notice was also filed with the Circuit Clerk of Montgomery County, Alabama, on May 2, 1983.

Jurisdiction of this Appeal is conferred by 28 U.S.C. § 1257 (2).

VII.

Constitutional Provisions and Statutes Involved.

(1) "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV., § 1.

(2) 1980 Ala. Acts, No. 708 (see Appendix F).

(3) Code of Ala., §§ 40-20-1 (8) -3 (1975) (see Appendix G).

VIII.

Statement of the Case and Facts

1980 Ala. Acts, No. 80-708 is the successor statute to 1979 Ala. Acts, No. 79-434 (hereinafter "Act 708" and "Act 434", respectively). The constitutional validity of various portions of Act 434 will be determined in those consolidated cases styled *Exxon Corporation v. Eagerton,* Supreme Court No. 81-1020, and *Exchange Oil and Gas Corporation v. Eagerton,* Supreme Court No. 81-1268. Since Act 708 retained *some* of the offending portions included in Act 434, the question presented on this appeal is precisely the same as one question pending before this Court in connection with Appellants' challenge to Act 434.

Appellants are owners of oil and gas in the State of Alabama and have drilled, and now operate, producing wells, the production from which is owned jointly with other lessees and royalty owners. Appellee is the Commissioner of Revenue for the State of Alabama, and he is responsible for collection of the Alabama Severance Tax on all oil or gas severed or extracted from beneath the earth or waters of the State. See Code of Ala., § 40-20-1, *et seq.* (1975).

Since 1945, the State of Alablama has levied a privilege tax upon every person engaged in the production or severing of oil or gas. See Code of Ala., § 40-20-2 (1975). The Alabama Severance Tax Article defines a "producer" as any person, including a royalty owner, who owns oil or gas produced from wells within the State. Code of Ala., § 40-20-1 (8) (1975). The Alabama Severance Tax Statutes mandate that the tax "is levied . . . in the portion of [the producer's] ownership at the time of severance . . ." Code of Ala., § 40-20-3 (a) (1975). Furthermore, "the person[s] in

charge of production operations" (i.e., operators of oil and gas wells such as Appellants) are "empowered and required to deduct", from the sale proceeds the "proportionate amount of the tax" due from the other owners of production (i.e., non-operating owners, such as royalty interest holders). *Id.*

On September 1, 1979, the Severance Tax Article of the Alabama Code was amended by Act 434. Act 434 made the following changes, among others, in the applicable severance taxes: (a) it increased the tax rate of 4%, based on the value of production, by 2%, for a total of 6%; (b) it taxed all oil or gas production within the State, including that portion of production known as the royalty interest, but it exempted royalty owners from the 2% tax increase.

Thereafter, on May 29, 1980, the Legislature amended Act 434 by enacting Act 708. Act 708 excised some of the constitutionally infirm portions of Act 434; however, Act 708 retained, from Act 434, the following provision (hereinafter described as the "royalty exemption"):

> Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor.

1980 Ala. Acts, No. 708, § 1 (d).

Appellants paid the 4% portion of the tax imposed by Act 708 without protest, but paid the 2% increase under protest. See Code of Ala., § 40-1-11 (1975). Appellants then filed suit in the Circuit Court of Montgomery County, Alabama, for a refund and a declaration that Act 708 was unconstitutional in that the royalty exemption violated the Equal Protection Clause of the fourteenth amendment to the United States Constitution.

At trial, Appellants established, among other things, that the royalty exemption did not encourage oil or gas exploration in the State of Alabama, as the Alabama Supreme Court had hypothesized in *Eagerton v. Ex-*

change Oil and Gas Corporation, 404 So. 2d 1, 5 (Ala. 1981). As an example of evidence presented, which was in no way contradicted or disputed by Appellee, Phillip E. LaMoreaux, Professor of Geology and former State Geologist, testified as follows:

> The lessor or royalty owner, like the lessee, is one of the parties to a common venture for the mutual benefit of all of the parties interested in producing the oil and gas. Traditionally the lessor or royalty owner has received compensation and monies in various forms; these are matters which vary from lease to lease according to the particular terms negotiated between the parties. The various forms of monies and remuneration paid to lessors/royalty owners include the following: bonus payments made in consideration of the lessor's execution of the lease; delay rentals paid during the time before actual production occurs; and royalty paid after production has occurred. Royalty can be in the form of production in kind or money derived from the sale of certain quantity of production; sometimes under a particular lease one party or the other has the right to designate how the royalty shall be taken. The quantity of royalty is subject to negotiation, and various leases reflect varying percentages of royalty. I am familiar with royalties which range as low as 6.25% to as high as 50%. There are also various types of royalties such as the overriding royalty which, according to general understanding, is a royalty interest carved out of the lessee's working interest.
>
> As has been stated, the royalty owner is one of the parties engaged in the common venture of producing oil and gas for the mutual benefit of all of the parties. By negotiation and by the various negotiated contractual provisions, the

parties have dealt with their economic entitlements and with their respective obligations and rights. The fact that these matters are subject to negotiation and are subject to variation from lease to lease underscores the fact that the lessor/royalty owner is a member of the class of persons engaged in the production of oil and gas. Apparent for the reasons which have been mentioned, the Code of Alabama at § 40-20-1 (8) defines "producer" as including a royalty owner as well as a working interest owner.

Because royalty owners are a part of the class of persons engaged in the common venture of producing oil and gas for the mutual benefit of all, there is no valid reason why the Alabama Legislature in Act 708 exempted royalty owners from the tax increase imposed by the act. Moreoever, there is an affirmative reason why royalty owners, even more so than working interest owners, should not pay any less tax. The working interest owner decides whether to start production; the working interest owner bears the costs of production whereas the royalty owner takes the royalty free from such costs. If the tax burden falls lighter upon the royalty owner and heavier upon the working interest owner, then the tax has the effect of discouraging, and certainly not encouraging, oil and gas exploration and production.

Affidavit of Phillip E. LaMoreaux (Appendix I). *See also,* Affidavit of W.F. Bolding (Appendix I)[3]

However, notwithstanding the foregoing, based upon the prior determination of the Alabama Supreme Court in connection with challenge to Act 434, the Montgomery

[3] By stipulation, affidavits were submitted in lieu of testimony. See Stipulations of the Parties (Appendix H).

County Circuit Court ruled that the royalty exemption did not offend the Equal Protection Clause of the United States Constitution. See various orders entered by the court in Appendix D.

Appellants appealed the decision of the Circuit Court to the Alabama Supreme Court; however, the Alabama Supreme Court affirmed the trial court, holding that the royalty exemption did not violate the Equal Protection Clause. *See Union Oil Company of California v. Eagerton,* 426 So. 2d 814 (Ala. 1982) (Appendix A). On Petition for Rehearing, the issue was again presented to the Alabama Supreme Court; but, without opinion, on February 11, 1983, the Alabama Supreme Court denied Appellants' Petition for Rehearing. *See Union Oil Company of California v. Eagerton,* 426 So. 2d 814 (Ala. 1982), reh. denied (February 11, 1983) (Appendix C).

IX.

The Questions are Substantial

The Fourteenth Amendment to the United States Constitution protects against taxing statutes which are unreasonable and arbitrary. The royalty exemption is manifestly unjust, not only because common ownership of the oil and gas between royalty owners and working interest owners establishes that they are similarly situated, but also because the taxing provision works to require that the non-exempt owners pay the royalty interest share of the tax increase in addition to their own tax. Furthermore, the tax is applied regressively among working interest owners without a rational basis or for a conceivable purpose. The result reached by the Alabama Supreme Court is contrary to the spirit and intent of the Constitution, as well as cases decided by this Court prohibiting invidious discrimination and arbitrary imposition of privilege taxes.

Argument

1980 Ala. Acts, No. 80-708, Violates the Equal Protection Clause of the Fourteenth Amendment Not Only by Discriminating Among the Class of all Oil and Gas Production Owners Including Royalty Owners and Working Interest Owners, but also by Discriminating Among Working Interest Owners.[4]

1. A taxing statute must treat equally those who are similarly situated.

The fourteenth amendment protects against taxation which is palpably arbitrary or grossly unequal in its application to the persons concerned. *Dane v. Jackson,* 256 U.S. 589 (1921). Thus, a state taxing statute according differential treatment to persons must make its distinction between those persons on a rational basis, and with a legitimate purpose. *Western & Southern Life Insurance Company v. State Board of Equlization,* 451 U.S. 648 (1981), and the taxing statute must operate alike on all those persons similarly situated. *WHYY v. Glassboro,* 393 U.S. 117 (1968); *Hopkins v. Southern California Telephone Co.,* 275 U.S. 393 (1928).

The various owners of production (producers of oil or gas) are merely joint venturers and co-owners of the mineral estate, sharing pro-rata the well's production in return for their respective contributions to the venture. *See Barwise v. Sheppard,* 299 U.S. 33, 39 (1936). The

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[4] This case is a companion case to *Exxon Corporation v. Eagerton,* Case Number 81-1020, and *Exchange Oil and Gas Corporation v. Eagerton,* Case Number 81-1268, presently under submission in this Court. As stated, the issue presented herein is identical to one issue now before the Court in those cases. Appellants respectfully suggest that probable jurisdiction should be noted herein, and submission of this case withheld until decision is rendered in the pending cases, or, alternately, that this case be consolidated with those pending cases.

attempt, by way of the royalty exemption, to exempt one owner of production from payment of the 2% increase in the severance taxes unquestionably violates the Equal Protection Clause of the fourteenth amendment, as the exempted owner is situated no differently from the other owners. Additionally, the royalty exemption is especially discriminatory in that the working interest owners are required to disproportionally bear the royalty owner's share of the severance tax.

2. Act 434 discriminates among that class of oil and gas owners including royalty interest owners and working interest owners.

The Severance Tax is levied "upon every person engaged . . . in the business of producing or severing oil or gas." 1980 Ala. Act, No. 708, § 1(a). The tax is levied on all production, including that of the royalty interest, 1980 Ala. Acts, No. 708, § 1 (b), and the tax is levied in proportion to ownership. Code of Ala., § 40-20-3 (a) (1975). Additionally, a "producer", under the Act, is "any person engaging . . . in the business of oil and gas production, . . . *including* [*owners receiving*] *royalty or rental from oil and gas produced . . . .*" Code of Ala., § 40-20-1 (8) (1975) (emphasis added). Thus, for purposes of the Severance Tax Article, working interest owners and royalty interest owners are members of the same tax classification, i.e., owners of production.

More importantly, this Court, in *Barwise v. Sheppard,* 299 U.S. 33 (1936) held constitutional a Texas severance tax which taxed production of all owners in proportion to their respective interests. The Court recognized that the lessor/royalty owners and the lessee/working interest owners, as co-owners and joint-venturers in the production of minerals, are members of the same taxing classification. *Id.* at 3[illegible]. Thus, this Court is rightfully committed to the proposition that a severance tax is reasonable where the tax is equally apportioned among all of the various mineral interest owners because there is

no basis upon which to distinguish one owner from another. *See also, Lake Superior Consolidated Iron Mines v. Lord,* 271 U.S. 577 (1926).

The Alabama Supreme Court ruled that, as to the 2% tax increase, royalty interests in the mineral estate could properly be placed in a class apart from other interests. However, that court failed to appreciate that the Alabama Severance Tax Article provides that all mineral owners are part of the same tax classification. Additionally, the Alabama Court failed to realize that a royalty owner is no more than a joint venturer with the working interest owners, sharing in kind the production of a well. Although the state's interest in encouraging oil and gas exploration is significant, it is not reasonable to believe that working interest owners, whose share in oil or gas production is indistinguishable from that of the royalty interests, should be singled out for discriminatory treatment.

The effect of the Alabama Supreme Court's ruling is that the 4% portion of the tax is borne by all owners in proportion to their fractional ownership interest, as required by Code of Ala., § 40-20-3 (a) (1975), but the 2% increase levied by Act 708 is borne entirely by the working interest owners. The class which the Legislature selected in § 40-20-3 (a) is *all owners* of production, and this is per se a just and reasonable classification under the Alabama Severance Tax Article and under *Barwise.* It is this reasonable classification which Act 708, as construed by the Alabama Supreme Court, destroys, by purporting to tax oil and gas production derived from the same mineral estate disproportionately to the mineral interest ownership.

The bottom line paradox resulting from the Alabama Supreme Court's decision is that the 4% portion of the tax is levied pro rata, proportionate to ownership, on both royalty and working interest owners, under the reasonable class of all owners, but the 2% tax increase is not levied in proportion to ownership. Thus, the Alabama Supreme Court holds that the royalty owner is not to be

classified with working interest owners as to the 2% portion of the tax, but that royalty owners and working interest owners are part of the same classification for purposes of the 4% portion of the tax! The illogic of the Alabama Supreme Court's opinion is apparent - the court has done nothing more than rubber stamp the Act's invidious discrimination against non-royalty owners.

3. Even if working interest owners and royalty interest owners are not within the same taxing classification; nevertheless, Act 708 discriminates among working interest owners.

The Alabama legislature chose to levy an additional 2% tax on *all* oil and gas production, and the tax was to be paid by *all* those producing or severing the oil or gas, except owners of royalty interests. Since the royalty interest owners, exempted from taxation, have varying shares of the production, depending on the lease involved, the resulting tax on the other mineral interest owners (working interests) is in varying disproportion to the actual working interest share owned. The result is that working interest owners bear the tax burden of the exempt royalty owners, and, among working interest owners, the tax is imposed regressively. That is, the smaller the working interest, the greater the tax burden in proportion to that interest.

Even assuming for argument that royalty owners are not to be included in the class of all producers including working interest holders; nevertheless, the tax does not operate uniformly among working interest holders. If, as the Alabama Supreme Court speculated, the taxing scheme was designed to pursue the legitimate purpose of encouraging oil and gas production, *see Eagerton v. Exchange Oil and Gas Corp.*, 404 So. 2d 1, 5 (Ala. 1981), *Union Oil Company of California v. Eagerton,* 426 So. 2d 814, 816 (Ala. 1982), certainly statutory classifications distinguishing among working interest owners do not "rest on difference pertinent to the subject in respect of

which the classification [was] made". *Power Manufacturing Co. v. Saunders*, 274 U.S. 490, 494 (1927).

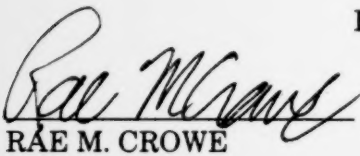
No tax on production can be said to encourage production, and that is especially true when the tax is levied entirely on those responsible for costs of exploration, drilling and the dry hole risk, and in amounts disproportionate to the working interest owned. There can be no rational basis to believe that the tax, as imposed, would encourage oil and gas production, and the taxing statute is palpably arbitrary and grossly unequal in its application to the working interest owners.

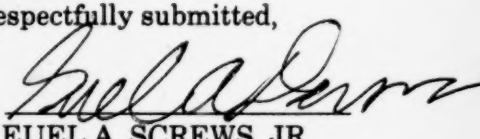
X.

Conclusion

The questions presented by this Appeal are substantial and merit the plenary jurisdiction of this court, further examination in brief, and oral argument.

Respectfully submitted,





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UNION OIL COMPANY OF CALIFORNIA, et al.,
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Appellee.

On Appeal From the Supreme Court of
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PROOF OF SERVICE

I, RAE M. CROWE, one of the attorneys for Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company, Appellants herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 10 day of May, 1983, I served copies of the foregoing Jurisdictional Statement to the Supreme Court of the United States on all parties required to be served as follows:

1. On Appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States Post Office, with first class postage prepaid, addressed to John J. Breckenridge, Esquire, his counsel of record, at 201 Administrative Building, Montgomery, Alabama 36130.

2. On all partaies to the proceeding below, by depositing copies in a United States Post Office, with first class

postage prepaid, addressed to their respective attorneys of record, as follows:

TO: C.B. Arendall, Jr., Esquire and
Louis E. Braswell, Esquire, Attorneys for
Exxon Corporation and Louisiana Land and
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TO: James R. Seal, Esquire, Attorney for Warrior
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RAE M. CROWE
Attorney for Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company

APPENDIX A

THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1982-83

Union Oil Company of California, et al.

81-169 v.

Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama

Exxon Corporation, et al.

81-207, 81-503,
81-643, 81-966, v.
82-32 & 82-165

Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama

Getty Oil company, a Corporation, et al.

81-538 v.

Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama

Phillips Petroleum Company, Getty Oil Company, Placid Refining Company, Inc.

Union Oil Company of California

81-972
82-33 v.

Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama

The Louisiana Land and Exploration Company, et al.

81-742 v.

Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama

ALMON, JUSTICE.

This appeal comes after remand of these consolidated cases in *Eagerton v. Exchange Oil and Gas Corporation*, 404 So. 2d 1 (Ala. 1981) *(Eagerton v. Exchange)*. The trial court entered a judgment in favor of Eagerton, as Commissioner of Revenue, based upon a stipulation of the parties. We affirm.

Many of the issues that the oil company appellants raise herein are identical to, or are variations on, the issues decided in *Eagerton v. Exchange, supra*. The legislature amended the oil and gas severance tax subsequent to that decision, however, so this appeal presents a further question of statutory interpretation. The oil companies assert that the legislature changed the purpose of the new act during passage and thus violated § 61 of the Alabama Constitution.

In 1979 the legislature passed Act No. 79-434 to increase the severance tax on oil and gas production in Alabama. A number of oil companies paid the higher tax under protest and filed suit for refunds. The circuit court held Act No. 79-434 unconstitutional and ordered the refunds. This court reversed and remanded. *See Eagerton v. Exchange, supra.*

In the 1980 legislature, Representative Hines, who had introduced the bill which became Act No. 79-434, introduced a bill (H.B. .909) with the following title:

> "To repeal Section 40-20-2 and Section 40-20-8, Code of Alabama 1975, as amended by Act 434, Acts of Alabama 1979, and to reenact Section 40-20-2 and Section 40-20-8 as the same existed

> prior to enactment of Act 434, Acts of Alabama 1979, and to further provide for the rate of severance tax on the production of oil and gas on wells from 15,000 to 15,800 feet in the smackover formation that come into production after September 1, 1979, to provide further for distribution of the proceeds of the increased tax and to provide certain exemptions from the increased rate."

In addition to the provisions directly alluded to in the title, the proposed bill refunded the increased taxes collected under Act No. 79-434 and stated that prior interpretations (i.e., *Eagerton v. Exchange)* of Act No. .79-434 were "void." This bill was amended during passage so that it substantially reenacted Act No. 79-434 rather than repealing it. Acts of Alabama 1980, Act No. 80-708. The oil companies argue that this constitutes a change in purpose of the bill and so violates § 61 of the Alabama Constitution.

We disagree. The act as passed has the following title:

> "To amend Section 40-20-2 of the Code of Alabama 1975, so as to further provide for the severance tax on the production of oil and gas."

Thus, the bill as introduced and as passed dealt with the severance tax on oil and gas production and with amending § 40-20-2.[1]

The established law of this state is that the "purpose" within the meaning of § 61 is the general purpose. *State Docks Comm'n v. State ex rel. Jones,* 227 Ala. 521, 150 So. 537 (1933). *Opinion of the Justices,* 383 So. 2d 527 (Ala. 1980); *Opinion of the Justices,* 361 So. 2d 536 (1978). The general purpose of both versions of the bill was amending

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[1] We quote only the titles because the bill and the act are rather lengthy, and we think the above sufficiently sets out the substance of each.

§ 40-20-2 and providing for the oil and gas tax. Section 61 was not violated.

More particularly, in the field of revenue legislation, this Court has held that the purpose is the raising of revenues, and as long as a substitute bill has that same purpose, it does not violate § 61.

> ". . . The bill was, therefore, essentially amendatory of the existing law, and it is not inapt to say that its purpose was to amend the existing law. . . .
>
> ". . . Upon its consideration by the house, it was found to be unsatisfactory to a majority of the members; and thereupon another bill was brought forward in its stead, and substituted for it by way of amendment of it. This substitute related to the same subject — the levy, the assessment and collection of taxes — the raising of revenue. It had the same general effect upon existing laws, i.e., the substitute operated the emendation of existing laws, as did the original."

Southern Railway Co. v. Mitchell, 139 Ala. 629, 641, 37 So. 85 (1904).

The Court in *Southern Railway Co.* addressed a general revenue statute, but in *Harris v. State ex rel. Williams,* 228 Ala. 100, 151 So. 858 (1933), held the same principles to apply to a bill "to amend the revenue laws in respect to specific taxes," *Id.,* 228 Ala. at 102.

> "While the court was dealing with a general revenue bill, it shows that the proposal to amend the state's revenues is a single subject and that it has a single purpose, which purpose is not changed by a substitute different in many respects from the original bill. If the theory that a bill to raise revenue or to amend the revenue

> laws has but one subject and one purpose is sound, then the proposal to do so in one respect is not changed on its passage by the addition of an amendment of such laws in another respect, provided the title is not uncertain or misleading. So long as the original purpose of the bill is not changed it may be amended or a substitute enacted which will not take the status of a new bill."

Id., at 104. (citations omitted).

Of course, this analysis should not be taken to mean the legislature can take liberties with revenue bills and violate the spirit of § 61. Here, however, the bill never deviated from the purpose of amending the oil and gas severance tax. The legislature chose to re-enact the amendment wrought by Act No. 79-434 with minor changes rather than repealing that amendment and re-enacting the prior law. Curiously, if the oil companies were to prevail and have us find that Act No. 80-708 contravened the Constitution, § 40-20-2 would stand as amended by Act No. 79-434. The changes in Act No. 80-708 are favorable to the oil companies — for instance, Act No. 79-434's prohibition against passing the increase on to consumers was deleted from Act No. 80-708.

The oil companies further argue that the exemption of royalty owners from the increased tax violates the equal protection clause of the fourteenth amendment of the United States Constitution and § 35 of the Constitution of Alabama.

This Court rejected this argument in *Eagerton v. Exchange,* but the oil companies introduced affidavits into the record below to the effect that the lighter tax burden on royalty owners would not encourage oil and gas exploration and production. This testimony sought to contradict the statement in *Eagerton v. Exchange* that "it is conceivable that the exclusion of royalty owners from this increase in tax could encourage the development of new oil and gas well". *Id.*, 404 So. 2d at 5.

This issue is res judicata because it was litigated and decided in the first trial and this Court decided the issue against the oil companies on the first appeal. The court held Act No. 79-434 "valid in its entirety." *Id.*, 404 So. 2d at 8.

We do point out that the affidavits do not undercut the constitutionality of the royalty owner exemptions. The justification mentioned in *Eagerton v. Exchange* was not proposed as the only conceivable reason for the higher tax on working interest owners. The Court in *Ray E. Loper Lumber Co. v. State*, 269 Ala. 425, 113 So. 2d 686 (1959), upheld a timber severance tax which effectively imposed a higher tax on those who convert timber into lumber within the state than those who ship the timber out of the state still in the form of logs. The Court held the higher burden justifiable because

> "A severer of timber who merely severs it from the soil and ships it out of the State unconverted into lumber, enjoys merely the privilege of severing. One who severs from the soil and then converts the timber into lumber in Alabama enjoys not only the privilege of severing but also the privilege of manufacturing in this State.
>
> "The difference in the two classes is based on the difference in the privileges enjoyed. He who manufactures in Alabama enjoys an additional or greater privilege. We do not think a classification, which requires a greater tax from the one who enjoys the greater privilege, is arbitrary or fanciful. Such a classification is based on a real and substantial difference. We do not undertake to set out other substantial reasons which justify the classification."

Id., 269 Ala. at 433. The greater tax was not invalid even though a sawmill privilege license tax was also required. *Id.*, at 430. Similarly, oil companies enjoy the privilege of severing the oil and gas, whereas the royalty owners are

not, as such, active participants in the process of severing.

We note finally that the United States Supreme Court has recently addressed attacks on a state severance tax on Commerce Clause (U.S. Const. art I, § 8, cl. 3) and Supremacy Clause (U.S. Const. art. VI, cl. 2) grounds and held the tax constitutional. *Commonwealth Edison Co. v. Montana,* 453 U.S. 609 (1981). This case does not address the Equal Protection Clause of the Fourteenth Amendment, so the long-standing broad discretion given legislatures in classification for tax purposes, *Heisler v. Thomas Colliery Co.,* 260 U.S. 245 (1922), still stands.

For the foregoing reasons the circuit court properly granted judgment for Commissioner Eagerton. That judgment is therefore affirmed.

AFFIRMED.

All the justices concur.

APPENDIX B

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-169

Union Oil Company of
California, et al.

vs. MONTGOMERY CIRCUIT COURT

Ralph P. Eagerton, Jr., Etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Union Oil Company of California, Exchange Oil & Gas, Getty Oil company, Placid Oil Company and Phillips Petroleum Corporation, and Euel A. Screws, Jr. and James M. Edwards, sureties of the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-207

Exxon Corporation, et al.

vs. MONTGOMERY CIRCUIT COURT

Ralph P. Eagerton, Jr., Etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation and The Louisiana Land and Exploration Company, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-503

Exxon Corporation, et. al.

vs. MONTGOMERY CIRCUIT COURT

Ralph P. Eagerton, Jr., Etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation, and The Louisiana Land and Exploration Company, and Louis E. Braswell, surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-538

Getty Oil Company, a corporation, et al.

vs. MONTGOMERY CIRCUIT COURT

Ralph P. Eagerton, Jr., Etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Getty Oil Company, a corporation, Placid Oil Company, a corporation, Placid Refining Company, Inc., a corporation, Union Oil Company of California, a corporation and Phillips Petroleum Company, a corporation, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-643

Exxon Corporation, et al.

vs. MONTGOMERY CIRCUIT COURT

Ralph P. Eagerton, Jr., Etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation, The Louisiana Land and Exploration Company, Getty Oil Company, Phillips Petroleum Company, Placid Oil Company, Placid Refining Company, Inc. and Union Oil Company of California, and Euel A. Screws, Jr. and James M. Edwards, sureties for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-742

The Louisiana Land and Exploration Company, et al.

vs. MONTGOMERY CIRCUIT COURT

Ralph P. Eagerton, Jr., etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, The Louisiana Land and Exploration Company, Exxon Corporation, Placid Refining Company, Inc., Getty Oil Company, Union Oil Company of California and Phillips Petroleum, and Euel A. Screws, Jr., surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-966

Exxon Corporation, a corporation, and
The Louisiana Land and Exploration Company

vs. MONTGOMERY CIRCUIT COURT
#CV82-896-TH and 895

Ralph P. Eagerton, Jr., etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation, a corporation, and The Louisiana Land and Exploration Company, and Louis E. Braswell, surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

81-972

Phillips Petroleum Company, et al.

vs. MONTGOMERY CIRCUIT COURT

Ralph P. Eagerton, Jr., etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Phillips Petroleum Company, Getty Oil Company, Placid Refining Company, Inc., and Union Oil Company of California, and Euel A. Screws, Jr., surety for the costs of the appeal, pay the costs of appeal as provided by the Alabama Rules of Apellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

82-32

Exxon Corporation, et al.

vs. MONTGOMERY CIRCUIT COURT
#CV82-1247 & 1248

Ralph P. Eagerton, Jr., etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation, a corporation, and The Louisiana Land and Exploration Company, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

82-33

Phillips Petroleum Company, et al.

vs. MONTGOMERY CIRCUIT COURT
#CV 82-1296, 92-1298, 82-1299, 82-1300

Ralph P. Eagerton, Jr., etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Phillips Petroleum Company, Placid Refining Company, Inc., Getty Oil Company and Union Oil Company of California, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

DECEMBER 10, 1982

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

OCTOBER TERM 1982-83

82-165

Exxon Corporation and The
Louisiana Land and Exploration Company

vs. MONTGOMERY CIRCUIT COURT
#CV82-1559-TH

Ralph P. Eagerton, Jr., etc.

This cause having been duly argued and submitted, IT IS CONSIDERED, ORDERED AND ADJUDGED that the judgment of the circuit court be affirmed.

IT IS FURTHER ORDERED AND ADJUDGED that the appellants, Exxon Corporation and The Louisiana Land and Exploration Company, and Louis E. Braswell, surety for the costs of appeal, pay the costs of appeal as provided by the Alabama Rules of Appellate Procedure. And it appearing that said parties have waived their rights of exemption under the laws of Alabama, IT IS ORDERED that execution issue accordingly.

OPINION OF ALMON, J.
TORBERT, C.J., MADDOX, FAULKNER, JONES, SHORES, EMBRY, BEATTY AND ADAMS, JJ., CONCUR.

APPENDIX C

February 11, 1983

Re: 81-169 and consolidated cases

Union Oil Company of California, et. al.
Apellant

vs.

Ralph P. Eagerton, Jr., etc.
Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

_____ Appeal docketed. Future correspondence should refer to the above number.

_____ Court Reporter granted additional time to file reporter's transcript to and including

_____ Clerk/Register granted additional time to file clerk's desk record/record on appeal to and including

_____ Appell _____ granted 7 additional days to file briefs to and including

_____ Appellant(s) granted 7 additional days to file reply briefs to and including

_____ Record on Appeal filed

_____ Appendix Filed

_____ Submitted on Briefs

_____ Petition for Writ of Certiorari denied. No opinion.

xxxx Application for rehearing overruled. No opinion written on rehearing.

_____ Permission to file amicus curiae briefs granted

_____

2-11-83
wo

Acting Clerk, Supreme Court of Alabama

APPENDIX D

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

Exxon Corporation, et. al.,
Plaintiffs,

v.

Ralph Eagerton, etc.
Defendant.

Civil Action nos.:

CV-81-221-P	CV-81-856-P	CV-80-1580-P
CV-81-297-P	CV-81-857-P	CV-80-1641-P
CV-81-298-P	CV-81-876-P	CV-80-1642-P
CV-81-299-P	CV-81-877-P	CV-80-1643-P
CV-81-300-P	CV-81-878-P	CV-80-1644-P
CV-81-301-P	CV-81-879-P	CV-80-1645-P
CV-81-302-P	CV-81-880-P	CV-80-1646-P
CV-81-543-P	CV-80-1322-P	CV-80-1780-P
CV-81-544-P	CV-80-1330-P	CV-80-1848-P
CV-81-593-P	CV-80-1331-P	CV-80-1849-P
CV-81-594-P	CV-80-1332-P	CV-81-034-P
CV-81-595-P	CV-80-1333-P	CV-81-035-P
CV-81-596-P	CV-80-1360-P	CV-81-036-P
CV-81-597-P	CV-80-1388-P	CV-81-037-P
CV-81-598-P	CV-80-1432-P	CV-81-038-P
		CV-81-039-P
		CV-81-220-P

ORDER

These consolidated declaratory judgment actions are submitted to the Court for decision pursuant to the Stipulation of the parties and upon stipulated facts.

The Court has thoroughly considered the documents filed by the parties together with their briefs. These cases all involve the constitutionality of Act No. 708, Acts of

Alabama 1980, Regular Session of the Alabama Legislature.

The Supreme Court of Alabama in *Eagerton* v. *Exchange Oil and Gas Corporation*, Supreme Court of Alabama, 79-823, July 10, 1981, specifically held Act No. 434, supra, to be "valid in its entirety." Upon the authority of *Eagerton*, this Court now determines Act No. 708 to be constitutional and valid in its entirety. The other and further relief requested by the Plaintiffs in each of the above consolidated cases be and the same is hereby DENIED.

Costs of these proceedings be and the same are hereby taxed against Plaintiffs for the collection of which execution may issue.

DONE this the 29th day of September, 1981.

_____

CIRCUIT JUDGE

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

Exxon Corporation, et. al.,
Plaintiffs,

v.

Ralph Eagerton, etc.
Defendant.

Civil Action Nos.:

CV-81-221-P	CV-81-877-P	CV-80-1641-P
CV-81-297-P	CV-81-878-P	CV-80-1642-P
CV-81-298-P	CV-81-879-P	CV-80-1643-P
CV-81-299-P	CV-81-880-P	CV-80-1644-P
CV-81-300-P	CV-81-1149-P	CV-80-1645-P
CV-81-301-P	CV-81-1150-P	CV-80-1646-P
CV-81-302-P	CV-81-1172-P	CV-80-1780-P
CV-81-543-P	CV-81-1173-P	CV-80-1848-P
CV-81-544-P	CV-81-1174-P	CV-80-1849-P
CV-81-593-P	CV-80-1322-P	CV-81-034-P
CV-81-594-P	CV-80-1330-P	CV-81-035-P
CV-81-595-P	CV-80-1331-P	CV-81-036-P
CV-81-596-P	CV-80-1332-P	CV-81-037-P
CV-81-597-P	CV-80-1333-P	CV-81-038-P
CV-81-598-P	CV-80-1360-P	CV-81-039-P
CV-81-856-P	CV-80-1388-P	CV-81-220-P
CV-81-857-P	CV-80-1432-P	CV-81-1175-P
CV-81-876-P	CV-80-1580-P	CV-81-1177-P

ORDER

This case is presented to the court upon the Motion for New Trial or in the Alternative to Alter, Amend, or Vacate the Judgment, heretofore filed, and upon consideration of same the Court finds and is of the opinion that said Motion should be denied. It is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the Motion for New Trial or in the Alternative to Alter, Amend, or Vacate the Judgment, heretofore filed, be and the same is hereby DENIED.

DONE this the 5th day of November, 1981.

_____

CIRCUIT JUDGE

IN THE FIFTEENTH JUDICIAL
CIRCUIT OF ALABAMA

Exxon Corporation, A Corporation; Louisiana Land & Exploration Co., A Corporation; Getty Oil Company, A Corporation; Placid Oil Company, A Corporation; Placid Refining Company, Inc., A Corporation; Union Oil Company of California, A Corporation; and Phillips Petroleum Company, A Corporation;

Plaintiffs

v.

Ralph P. Eagerton, Jr., As Commissioner of Revenue of the State of Alabama

Defendant

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
IN EQUITY
CV81-1502-TH, CV81-1503-TH
CV81-1547-TH, CV81-1548-TH
CV81-1549-TH, CV81-1552-TH
CV81-1553-TH, CV-82-74-TH,
CV-82-75-TH, CV-82-76-TH,
CV-82-77-TH, CV-82-78-TH
CV-82-08-TH
CV-82-09-TH

FINAL JUDGMENT

The above-styled actions having previously been consolidated by Order of the Court, the above actions are presently before the Court upon the Defendant Commissioner of Revenue's *Motion for Judgment on the Pleading.*

The Court has thoroughly considered the documents filed by the parties together with their briefs. These cases all involve the constitutionality of Act 80-708, Acts of Alabama, 1980 Regular Session. As the parties have

stated in their pleadings, this Act is nearly identical to Act 79-434, Acts of Alabama, 1979 Regular Session.

The Supreme Court of Alabama in *Eagerton v. Exchange Oil & Gas Corporation, et. al.,* Ala., 404 So.2d 1 (1981), specifically held Act 79-434, supra, to be "valid in its entirety." On September 29, 1981, the Circuit Court of Montgomery County, Alabama upheld and determined Act 80-708 to be "constitutional and valid in its entirety". Upon consideration of the previous decision of the Supreme Court of Alabama in *Eagerton v. Exchange Oil & Gas Corporation,* supra, and the decision of the Circuit Court of Montgomery County, Alabama involving the same parties to the present action, it is the decision of this Court that Act 80-708 is constitutional and valid in its entirety and the payments made by the Plaintiffs to the Defendant under protest which are the subject matter of the present consolidated actions are entirely lawful and are due and owing. The other and further relief requested by the Plaintiffs in each of the above consolidated actions are due to be and same is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED by this Court that the costs of these proceedings be and the same are hereby taxed against the Plaintiffs for the collection of which execution may issue.

DONE AND ORDERED this the 25th day of February, 1982.

_____
CIRCUIT JUDGE

John Breckenridge
James Seale
Euel Screws
Louis Braswell
Rae Crowe

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

Exxon Corporation, a corporation
CV-82-349-TH

The Louisiana Land and Exploration Company,
CV-82-350-TH

Getty Oil Company,
CV-82-351-TH

Phillips Petroleum Company,
CV-82-352-TH

Placid Oil Company,
CV-82-353-TH

Placid Refining Company, Inc.,
CV-82-354-TH

Union Oil Company of California,
CV-82-355-TH

Plaintiffs,

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments

required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 31st day of March, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

The Louisiana Land and Exploration Company,

Plaintiff,

v. Civil Action No. 82-601-TH

Ralph Eagerton, Commissioner of Revenue of the State of Alabama.

Defendant.

Exxon Corporation, a corporation,

Plaintiff,

v. Civil Action No. 82-602-TH

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 31st day of March, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

Louis E. Braswell
Richard A. Chopin
John Breckenridge
Euel Screws
James Seale
Charles Snyder

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

Getty Oil Company,

Plaintiff,

vs. Civil Action No. 82-635-TH

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

Union Oil Company of California,

Plaintiff,

vs. Civil Action No. 82-636-TH

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

Phillips Petroleum Company,

Plaintiff,

vs. Civil Action No. 82-637-TH

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which

presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 31st day of March, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

Rae Crowe
Euel Screws
John Breckenridge
James Seale

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

The Louisiana Land and Exploration Company,

Plaintiff

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant Civil Action No. 82-601-TH

Exxon Corporation, a corporation,

Plaintiff

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant Civil Action No. 82-602-TH

Placid Refining Company, Inc.,

Plaintiff

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant Civil Action No. 82-634-TH

Getty Oil Company,

Plaintiff

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant Civil Action No. 82-635-TH

Union Oil Company of California

Plantiff

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama

Defendant Civil Action No. 82-636-TH

Phillips Petroleum Company,

Plantiff

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant Civil Action No. 82-637-TH

ORDER

The previous Order entered in five of the above consolidated cases was erroneously dated and the same is hereby vacated and withdrawn, and the following is substituted therefor:

The above six consolidated cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also the parties to those cases consolidated and decided within CV-81-1502-TH. By agreement of the parties, these six consolidated cases present identical issues as were presented in CV-81-1502-TH. It is therefore the finding of the Court that Act No. 80-708 is constitutional and valid in its entirety and the

payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the Defendant in each of the above six consolidated cases and the costs are taxed against the Plaintiffs, which have been prepaid.

DONE this the 17th day of May, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

Louis E. Braswell
Richard A. Chopin
John Breckenridge
Euel A. Screws, Jr.
James Seale
Rae Crowe
Charles A. Snyder

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

Exxon Corporation,

Plaintiff, Civil Action No. CV-82-895-TH

The Louisiana Land and Exploration Company,

Plantiff, Civil Action No. CV-82-896-TH

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama,

Defendant

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 28th day of July, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

Louis Braswell
John Breckenridge

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

Phillips Petroleum Company,
Plantiff, Civil Action No. CV-82-946-TH

Getty Oil Company,
Plantiff, Civil Action No. CV-82-947-TH

Placid Refining Company, Inc.,
Plantiff, Civil Action No. CV-82-948-TH
Union Oil Company of California,
Plantiff, Civil Action No. CV-82-949-TH

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 28th day of July, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

Rae Crowe
Euel Screws
John Breckenridge

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

Exxon Corporation	Civil Action No. 82-1247-TH
The Louisiana Land and Exploration Co.	Civil Action No. 82-1248-TH
Phillips Petroleum Company	Civil Action No. 82-1300-TH
Placid Refining Company, Inc.	Civil Action No. 82-1298-TH
Getty Oil Company	Civil Action No. 82-1296-TH
Union Oil Company of California	Civil Action No. 82-1299-TH

Plantiffs,

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which have been prepaid.

Done this the 21st day of September, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

Louis E. Braswell
Rae Crowe
Euel Screws
John Breckenridge

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

Exxon Corporation, a corporation

Plantiff,

vs. Civil Action No. 82-1558-TH

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

The Louisiana Land and Exploration Company,

vs. Civil Action No. 82-1559-TH

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

ORDER

The above cases come before this Court challenging the constitutionality of Act 80-708. The parties to these cases were also parties to those cases consolidated and rendered with CV-81-1502-TH. By agreement of the parties, judgment is entered as it was in CV-81-1502-TH, which presented identical issues, finding the Act 80-708 constitutional and valid in its entirety and the payments required by Act 80-708 are found to be lawful and are due and owing.

Therefore, judgment is entered in behalf of the defendant and the costs are taxed against the plaintiffs, which

have been prepaid.

Done this the 8th day of November, 1982.

H. RANDALL THOMAS
CIRCUIT JUDGE

C.B. Arendall, Jr.
John Breckenridge

APPENDIX E

IN THE SUPREME COURT OF ALABAMA

Union Oil Company of California, et al.,

Appellants,

versus

Ralph P. Eagerton, Jr., etc.,

Appellee.

Case No. 81-169 (and all cases consolidated therewith)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company, Appellants in the above styled causes, hereby appeal to the Supreme Court of the United States from the decision and final order in these consolidated actions dated December 10, 1982, by the Supreme Court of Alabama, affirming the judgment of the Circuit Court of Montgomery County, Alabama. Timely applications for re-hearing were filed, and re-hearing was denied on February 11, 1983.

This Appeal is taken pursuant to 28 U.S.C., § 1257 (2).

RAE M. CROWE
Attorney for Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company

OF COUNSEL:

ARMBRECHT, JACKSON, DeMOUY,
CROWE, HOLMES & REEVES
Post Office Box 290
Mobile, Alabama 36601

EUEL A. SCREWS, JR.
COPELAND, FRANCO, SCREWS and
GILL., P.A.
Post Office Box 347
Montgomery, Alabama 36101

PROOF OF SERVICE

I, Rae M. Crowe, one of the attorneys for Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company, Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 2nd day of May, 1983, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on all parties required to be served as follows:

1. On Appellee herein, Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, by depositing a copy in a United States Post Office, with first class postage prepaid, addressed to John J. Breckenridge, Esquire, his counsel of record, at 201 Administrative Building, Montgomery, Alabama 36130.

2. On all parties to the proceeding below, by depositing copies in a United States Post Office, with first class postage prepaid, addressed to their respective attorneys of record as follows:

TO: C.B. Arendall, Jr., Esquire, and Louis E. Braswell, Esquire, Attorneys for Exxon Corporation and Louisiana Land and Exploration Company
Post Office Box 123
Mobile, Alabama 36601

TO: James R. Seale, Esquire, Attorney for Warrior Drilling and Engineering Company, Inc.
Post Office Box 2069
Montgomery, Alabama 36130

I further certify that on said date I mailed a copy of the foregoing Notice of Appeal to the Clerk of the Circuit Court of Montgomery County, Alabama, inasmuch as that court may be possessed of the record herein.

RAE M. CROWE,
Attorney for Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company

APPENDIX F

ALABAMA LAW

(Regular Session, 1980)

Act No. 80-708 H. 909-Hines

AN ACT

To amend Section 40-20-2 of the Code of Alabama 1975, so as to further provide for the severance tax on the production of oil and gas.

Be It Enacted by the Legislature of Alabama:

Section 1. Section 40-20-2 of the Code of Alabama 1975 is hereby amended to read as follows:

"§ 40-20-2.

"(a) There is hereby levied, to be collected hereafter, as herein provided, annual privilege taxes upon every person engaging or continuing to engage within the state of Alabama in the business of producing or severing oil or gas, as defined herein, from the soil or the waters, or from beneath the soil or the waters, of the state for sale, transport, storage, profit or for use. The amount of such tax shall be measured at the rate of six percent of the gross value of said oil or gas at the point of production. All wells producing less than 40 barrels of oil per day shall be taxed at the rate of four percent of the gross value of said oil or gas at the point of production. All wells that come into production after September 1, 1979, shall be taxed at the rate of four percent of the gross value of said oil or gas at the point of production for a period of 10 years after production begins. Ten years after production begins, such tax shall then be imposed at the rate of six percent on such wells that go into production after September 1, 1979; provided, that said additional increase

shall be limited to those oil and gas wells from between 15,000 and 15,800 feet in the smackover formation.

"(b) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil or gas is severed from the soil or the waters, or from beneath the soil or the waters, and in its natural, unrefined or unmanufactured condition.

"(c) A county, city, town or municipality of the state of Alabama shall not establish, levy, impose or collect, as a condition of doing business or otherwise, any tax, fee, license or charge whatsoever, directly or indirectly, on or with respect to the production, treating, processing, ownership, sale, storage, purchase, marketing or transportation on any oil or gas produced in the state of Alabama and on which severance taxes have been paid to the state of Alabama, or upon the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas, or upon the ownership, operation or maintenance of plants, facilities, machinery, pipelines, gathering lines or any equipment whatsoever, which are, or may be, necessary or convenient to the production, treating, processing, ownership, storage, sale, purchase, marketing or transportation of such oil or gas; provided, that nothing herein shall be construed to prohibit, limit or restrict a county, city, town or municipality from imposing and collecting ad valorem taxes on any property, real of personal, not otherwise now exepted by law; further, the limitation herein imposed upon counties, cities, towns and municipalities shall not apply to any county, city, town or municipality which does not receive a share of the severance tax under the provisions of this article.

"(d) Nothing contained herein shall be deemed to limit or to enlarge the authority of a county, city, town or municipality to levy taxes or licenses on oil refining facilities located therein or on the suppliers of services or goods not including oil or gas to those persons engaging in the business of producing, treating, processing, owning, selling, buying, storing, marketing or transporting such oil or gas. Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor.

"(e) In all cases of production of oil from unit operations as authorized and approved by the state oil and gas board of Alabama, for purposes of computing the per well production aforesaid, the aggregate production of oil from the entire unit shall be divided by the number of wells within the unit, including injection, disposal and other wells utilized in unit operations, and the quotient thereof shall be deemed and declared to be the number of barrels of oil produced from each well in such unit regardless of the actual amount of oil per day produced from the well, if any."

Section 2. This Act shall become effective immediately upon its passage and approved by the Governor, or upon its otherwise becoming a law.

Approved May 28, 1980

Time: 4:00 P.M.

I hereby certify that the foregoing copy of an Act of the Legislature of Alabama has been compared with the enrolled Act and it is a true and correct copy thereof.

Given under my hand this 29th day of May, 1980.

JOHN W. PEMBERTON
Clerk of the House

APPENDIX G

§ *40-20-1. Definitions.*

For the purpose of this article, the following terms shall have the respective meanings ascribed by this section:

. . . .

(8) PRODUCER. Any person engaging or continuing in the business of oil or gas production, which, for the purpose of this article, includes the owning, controlling, managing, or leasing of any oil or gas property or oil or gas well, and producing in any manner any oil or gas by taking it from the soil or waters, or from beneath the soil or waters, of the state of Alabama, and further includes receiving money or other valuable consideration as royalty or rental for oil or gas produced or because of oil or gas produced, whether produced by him or by some other person on his behalf, either by lease, contract or otherwise, and whether the royalty consists of a portion of the oil or gas produced being run to his account or a payment in money or other valuable consideration.

§ *40-20-3. Taxed levied upon producers in proportion to ownership at time of severance; by whom tax paid; lien.*

(a) The privilege tax hereby imposed is levied upon the producers of such oil or gas in the proportion of their ownership at the time of severance, but, except as otherwise herein provided, the tax shall be paid by the person in charge of the production operation, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments to such producers. The tax shall become due and payable as provided by this article and such tax shall constitute a first lien upon any of the oil or gas so produced when in the possession of the original producer or any purchaser of such oil or gas in its unmanufactured state or condition. In the event the

person in charge of production operations or the purchaser fails to pay the tax, then the department shall proceed against the producer or the purchaser to collect the tax in the manner hereinafter provided by this article.

. . . .

APPENDIX H

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, ALABAMA

Getty Oil Company,

Plaintiff

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue,

Defendant

Case No. 80-1331-P, 80-1641-P, 81-036-P, 81-301-P, 81-598-P, 81-880-P

Exchange Oil and Gas,

Plaintiff

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue,

Defendant

Case No. 80-1330-P, 80-1646-P, 81-035-P, 81-297-P, 81-297-P

Placid Refining Co.,

Plaintiff

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue,

Defendant

Case No. 80-1360-P, 80-1645-P, 81-038-P, 81-299-P, 81-596-P, 81-876-P, 81-1175-P

Phillips Petroleum Company,

Plaintiff

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue,

Defendant

Case No. 80-1388-P, 80-1643-P, 81-039-P, 81-300-P, 81-595-P, 81-878-P, 81-1177-P

Placid Oil Company,

Plaintiff

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue,

Defendant

Case No. 80-1333-P, 80-1644-P, 81-037-P, 81-298-P, 81-594-P, 81-879-P, 81-1172-P

Union Oil Company,

Plaintiff

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue,

Defendant

Case No. 80-1332-P, 80-1642-P, 81-034-P, 81-302-P, 81-593-P, 81-877-P, 81-1174-P

Exxon Corporation, a corporation,

Plaintiff

vs.

Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama,

Defendant

Case No. CV-80-1322, CV-80-1580, CV-80-1848, CV-81-220, CV—81-543, CV-81-857, CV-81-1149, and consolidated cases

The Louisiana Land and Exploration Company,

Plaintiff

vs.

Ralph P. Eagerton, Jr., Commissioner of Revenue of the State of Alabama,

Defendant

Case No. CV-80-1432, CV-80-1780, CV-80-1849, CV-81-221, CV—81-544, CV-81-856, CV-81-1150, and consolidated cases

STIPULATION OF PARTIES

Defendant stipulates that each of the Plaintiffs timely and properly (a) paid the taxes, (b) protested the payment of the taxes, and (c) sued for refund of the taxes. Defendant further stipulates that, if the Court's decision on the merits should be in favor of Plaintiffs, Defendant will stipulate as to the amounts of the taxes which were paid.

The Plaintiffs stipulate that their evidence at the trial of these cases would be the following:

(i) The original bill of the legislation which became Act 80-708 (attached hereto as Exhibit A).

(ii) The affidavit of Philip E. LaMoreaux (Exhibit B).

(iii) The affidavit of W. F. Bolding (Exhibit C).

(iv) The analysis of the aforementioned original bill by Department of Revenue (Exhibit D).

(v) Two amendments suggested to Act 708 by Department of Revenue (Exhibit E).

(vi) Transmittal sheet from Motor Fuels Division to Secretary of Department of Revenue (Exhibit F).

(vii) Transcripts of proceedings in the House of Representatives of the legislation which became Act 708 (Exhibit G).

(viii) Transcript of proceedings in the Senate of the legislation which became Act 708 (Exhibit H).

(ix) Defendant's answers to interrogatories filed by Getty Oil, et al. (Exhibit I).

(x) Fiscal note of Senate Finance and Taxation Committee (Exhibit J).

The Defendant agrees that the affiants would testify at the trial as they have testified in their affidavits, and the Defendant makes no objection to the admission of such testimony on the ground of it being in affidavit form.

Defendant does object to the testimony of affiants on the grounds of competency, relevancy and materiality (but such grounds are not predicted on the testimony being in affidavit form as opposed to in person testimony).

Defendant would not offer any further evidence if the case were tried.

As heretofore stipulated, the cases are now submitted to the Court for decision without the necessity for actual trial.

Louis E. Braswell
Attorney for Plaintiffs
Exxon Corporation and
The Louisiana Land and
Exploration Company

Rae M. Crowe

Euel A. Screws, Jr.
Attorneys for Plaintiffs
Getty Oil Company,
Exchange Oil and Gas,
Placid Refining Co.,
Phillips Petroleum Company,
Placid Oil Company, and
Union Oil Company

John Breckenridge
Attorney for Defendant
Ralph P. Eagerton, Jr., as
Commissioner of Revenue of
the State of Alabama

IN THE FIFTEENTH JUDICIAL
CIRCUIT OF ALABAMA

In the Circuit Court of Montgomery County, Alabama

In Equity

Civil Action No. CV-81-1462-TH

Warrior Drilling & Engineering Co., Inc., a corporation,

Plaintiff,

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama,

Defendant.

In the Circuit Court of Montgomery County, Alabama

In Equity

Civil Action No. CV-81-1547-G

Getty Oil Company,

Plaintiff,

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama,

Defendant.

In the Circuit Court of Montgomery County, Alabama

In Equity

Civil Action No. CV-81-1548-H

Placid Oil Company,

Plaintiff,

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama,

Defendant.

In the Circuit Court of Montgomery County, Alabama

In Equity

Civil Action No. CV-81-1549-G

Union Oil Company of California,

Plaintiff,

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama,

Defendant.

In the Circuit Court of Montgomery County, Alabama

In Equity

Civil Action No. CV-81-1553-P

Phillips Petroleum Company,

Plaintiff,

vs.

Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama,

Defendant.

STIPULATION

Come now the Plaintiffs and Defendant in the above styled cause and hereby stipulate that any documents from the record of companion cases in the Circuit Court of Montgomery County may be filed and admitted into evidence in these causes by either Plaintiffs or Defendant. Neither Plaintiffs nor Defendant makes any admission with respect to the weight or probative value of any such documents so offered into evidence.

It is further stipulated by and between the parties herein that the Plaintiffs herein are producers of oil or gas within the State of Alabama, that the Plaintiffs have no wells which produce oil or gas from the smackover formation at depths of 15,000 to 15,800 feet and that, at the present time, all wells which do produce from the smackover formation at depths of 15,000 to 15,800 feet are located in Escambia County, Alabama.

OF COUNSEL:

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Armbrecht, Jackson, DeMouy,
Crowe, Holmes & Reeves
Post Office Box 290
Mobile, Alabama 36601

OF COUNSEL:

EUEL A. SCREWS, JR.

Copeland, Franco, Screws
& Gill, P.A.
Post Office Box 347
Montgomery, Alabama 36101

Attorneys for Plaintiffs

JOHN J. BRECKENRIDGE
201 Administrative Building
Montgomery, Alabama 36130

Attorney for Defendant

APPENDIX I

AFFIDAVIT

OF PHILIP E. LAMOREAUX

I am Philip E. LaMoreaux, and my address is 1312 Indian Hills, Tuscaloosa, Alabama. I am a consulting geologist working in the field of oil, gas and minerals, as well as certain other fields. I was Alabama State Geologist and Alabama State Oil and Gas Supervisor from 1961 until 1976. I was then, and I still am, Professor of Geology at the University of Alabama.

I have personal knowledge of the matters stated herein.

I am familiar with the various contractual arrangements made for the production of oil and gas in Alabama by the parties owning the various interests in the oil and gas to be produced. One such arrangement is the oil and gas lease under which the lessor becomes entitled to "royalty" in the event of production. Actually there are many variations of the oil and gas lease depending upon the particular provisions which are used in the particular lease. The lessor or royalty owner, like the leesee, is one of the parties to a common venture for the mutual benefit of all of the parties interested in producing the oil and gas. Traditionally the lessor or royalty owner has received compensation and monies in various forms; these are matters which vary from lease to lease according to the particular terms negotiated between the parties. The various forms of monies and remuneration paid to lessors/royalty owners include the following: bonus payments made in consideration of the lessor's execution of the lease; delay rentals paid during the time before actual production occurs; and royalty paid after production has occurred. Royalty can be in the form of production in kind or money derived from the sale of certain quantity of production; sometimes under a particular lease one party or the other has the right to designate

how the royalty shall be taken. The quantity of royalty is subject to negotiation, and various leases reflect varying percentages of royalty. I am familiar with royalties which range as low as 6.25% to as high as 50%. There are also various types of royalties such as the overriding royalty which, according to general understanding, is a royalty interest carved out of the lessee's working interest.

As has been stated, the royalty owner is one of the parties engaged in the common venture of producing oil and gas for the mutual benefit of all the parties. By negotiation and by the various negotiated contractual provisions, the parties have dealt with their economic entitlements and with their respective obligations and rights. The fact that these matters are subject to negotiation and are subject to variation from lease to lease underscores the fact that the lessor/royalty owner is a member of the class of persons engaged in the production of oil and gas. Apparent for the reasons which have been mentioned, the Code of Alabama at § 40-20-1(8) defines "producer" as including a royalty owner as well as a working interest owner.

Because royalty owners are a part of the class of persons engaged in the common venture of producing oil and gas for the mutual benefit of all, there is no valid reason why the Alabama Legislature in Act 708 exempted royalty owners from the tax increase imposed by the act. Moreover, there is an affirmative reason why royalty owners, even more so than working interest owners, should not pay any less tax. The working interest owner decides whether to start production; the working interest owner bears the costs of production whereas the royalty owner takes the royalty free from such costs. If the tax burden falls lighter upon the royalty owner and heavier upon the working interest owner, then the tax has the effect of discouraging, and certainly not encouraging, oil and gas exploration and production.

I am also familiar with the production of oil and gas from various geological formations and from various depths in Alabama, including production from the Smackover formation from the depth of 15,000 to 15,800 feet. Additionally, I am familiar with the geographic area in southwest Alabama which is underlain by the Smackover formation, and where production from the Smackover formation from the depth of 15,000 to 15,800 feet is occurring and can be expected to occur. Likewise, I am familiar with oil and gas production from other parts of the state.

With respect to the special treatment accorded by Act 708 to production from the Smackover formation from the depth of 15,000 to 15,800 feet, there is no valid reason for treating differently the production from this formation and this depth or the production from the geographic area where this production occurs. Nor is there any valid reason to encourage oil and gas production in other parts of the state and in other formations. Similarly, there is no valid reason to discourage oil and gas production in this part of the state or in this particular formation at this particular depth.

In support of the conclusions expressed in the preceding sentence, the Court should know that the Smackover formation exists at various depths some of which are shallower and some of which are deeper than the depth of 15,000 to 15,800 feet. There is no particular difference between production from the Smackover formation at the depth of 15,000 to 15,800 feet on the one hand and production from shallower and deeper depths in the Smackover formation. Also, in light of the various production wells which have been drilled in southwest Alabama where the Smackover formation exists at varying depths, there is no valid reason to discourage or to encourage oil and gas production in any particular area rather than in any other particular area. Until recently the only production in Alabama from Smackover formation at the depth of 15,000 to 15,800 feet occurred in Escambia County, although it is significant to note that

Escambia County also has other production. Escambia County has non-Smackover production (from the Norphlet formation which is a separate formation) which comes from a depth of 15,000 to 15,800 feet. Escambia County also has production from depths other than 15,000 to 15,800 feet. In October of 1980, production was obtained in Baldwin County from the Smackover formation at a depth between 15,000 and 15,800 feet. Additionally, it is possible that other counties could have Smackover production from the depth of 15,000 to 15,800 feet. Considering these facts and based upon my knowledge in general, there would be no valid reason to discourage production from the Smackover formation from 15,000 to 15,800 feet, either in Escambia County or Baldwin County or one of the other counties.

_____

Philip E. LaMoreaux

Subscribed and sworn to before me on this 18th day of September, 1981.

_____

Notary Public

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

Union Oil Company of California,

Plaintiff

vs.

Ralph Eagerton, Commissioner of Revenue of the State of Alabama,

Defendant.

AFFIDAVIT

STATE OF TEXAS

COUNTY OF HARRIS

Personally appeared before me the undersigned, W.F. BOLDING, who being by me first duly sworn deposes and says as follows:

1. I am Regional Land Manager for Union Oil Company of California having jurisdiction over the States of Alabama, Mississippi, Louisiana and the east part of Texas with regard to all land matters for Union, including acquisition of and negotiation of oil, gas and mineral leases. I attended Texas A&M and have been engaged in lease acquisitions and/or negotiations for the past 30 years.

I am familiar with Act 708 of the 1980 Legislature and know that it provides that: "Any person who is a royalty owner shall be exempt from the payment of any increase in taxes herein levied and shall not be liable therefor."

A royalty owner owns a share of production. The percentage of the royalty owner's share in production varies from lease to lease, depending upon any number of different factors, such as geological consideration, whether the proposed well is or is not close to proven

production, the number of acres involved, the terms and provisions of the proposed lease and any number of other factors in any given situation. Under all of Union's leases, and most other leases in general use in the industry, the landowner contributes his land or minerals in exchange for a negotiated percentage of production called "royalty." All dry hole risks and all drilling costs and expenses are borne solely by the lessee whose interest is generally known as the "working interest," since it does the work, takes the risk and pays the bills.

There is no difference between the royalty interest's ownership of its pro rata share of the well's production from that of the working interest's ownership of its pro rata share of the well's production. Since the working interest is generally the larger interest, it bears the larger share of severance taxes. However, I have seen royalties as high as 50% of the well's production, and I know that one of the largest royalty owners in Mobile County is Mobil Oil Corporation. The leases in question recognize the royalty owner's ownership of its pro rata share of production by allowing the Lessor/royalty owner to take its share "in kind," although in most instances the royalty owner elects to have its share of production sold and so as to receive the dollar proceeds of the sale of its oil or gas.

There is no conceivable circumstance which would encourage an operator or lessee under an oil, gas and mineral lease to drill highly expensive wells because the royalty owner is exempt from any portion of the severance tax.

Oil, gas and mineral leases are taken by lessees and are granted by lessors for a monetary consideration in the form of a cash bonus for signing and for production royalties accruing to the mineral owner. I know that in the States of Texas, Louisiana, Mississippi and formerly in Alabama royalty bears its fair share of the severance tax in proportion to the ownership interest on a percentage basis.

I have negotiated leases in Alabama in Mobile County with large landowners such as International Paper Company where the royalty was 25%. I know that many large corporations own royalty interests in Mobile County in producing gas properties, and it is highly inequitable to exempt the party who bears no risk and assumes no drilling or operational costs, the royalty owner, from his rightful share of severance tax burdens, especially when the party that assumes all of the risk and all of the drilling and operational costs, the lessee, is expected to assume the severance tax on the production attributable to the royalty interest.

Generally speaking, the Smackover Formation runs across southern Mississippi and southwest Alabama. Given two geological prospects of equal promise, on either side of the Alabama/Mississippi stateline, exemption of the royalty interest, particularly if it is required to be absorbed by the working interest owner, would discourage drilling in Alabama and encourage drilling in Mississippi. I can state without equivocation that increasing the cost burden of the lessee can in no conceivable way encourage exploration. In fact, it has just the opposite effect. The higher the tax burden on the party drilling the well, the greater the disincentive to explore for oil or gas.

_____

W. F. BOLDING

SWORN AND SUBSCRIBED to before me

this _____ day of _____,
1981.

_____

NOTARY PUBLIC

APPENDIX J

Appellants, pursuant to Rule 28.1, list the following parent companies, subsidiaries and affiliates:

Exchange Oil and Gas Corporation: Georgia Pacific Corp.; Bayou Hydro-Carbon, Inc.

Union Oil Company of California: Union Oil Company of Canada Limited; Union Oil Company of Great Britain; UNOCO Limited; Molycorp, Inc.; Moreland Development Company; Union Oil Credit Corporation; Union Geothermal Japan, Ltd.; Union International Exploration Co. LTD.; Union Oil Exploracao de Petroleo, LTDA; Unionoil Suez Ltda.; Union Oil Co. of Indonesia; Unionoil Japan, LTD.; Kyung In Energy Co., Ltd.; Union Oil Co. of the Netherlands; Unionoil Norge A/S; Philippine Geothermal Inc.; Unionoil Co. of Great Britain; Unocal Corporation; Union Oil Co. of Thailand; Union Oil Development Corp.; Arizona Refining Company; Hemphill Oil Company; West Coat Shipping Company; Pure-Gro Company; Poco Graphite, Inc., Pure Transportation Company; Arapahoe Pipe Line Company; Union Oil Offshore Exploration Company, Ltd.

Getty Oil Company: ADL Financial Services, Inc.; ADL Investment Company, Inc.; American Defender Life Insurance Company; American Travel Corporation; Apple Valley Ranchos Water Co.; Arbuckle Pipe Line Company; Associated Oil Company (1936 Company); Banner, Inc.; Basin Drilling Corp. (Authorized Trade Name); Basin Petroleum North Sea Corp.; Basin Petroleum Turkey Corp.; Bay Transport Corporation; Butte Pipe Line Company; Canadian Reserve Oil and Gas Ltd.; The Centennial Life Insurance Company; Chase Terminal Company (Joint Venture); Chase Transportation Company (Joint Venture); Chembond Corporation; Chembond of British Columbia Ltd.; Chemplex Company; Chemplex Company (Joint Venture); Chemplex Construction Corporation; Chisholm Pipeline Company; Columbian Reserve Oil and Gas Company; Crescent

Petroleum Company; Dieter Pohleann & Co. GmbH; Easco, B.V.; Easco, G.m.b.H.; Easco International, Sarl.; Easco Marine, Ltd.; Easco Petroleum, Ltd.; Easco, S.A.; Easco S.r.l.; Employers Reinsurance Corporation; Energy Fuels Corporation; Entertainment and Sports Programming Network, Inc.; ERC Management Corporation; FFEC - Five, Inc.; FFEC - Four, Inc.; FFEC - Six, Inc.; FFEC - Two, Inc.; F.I.C. & Associates, Inc.; First Administration Service Company, Inc.; First Excess and Reinsurance Corporation; First Fidelity Equity Corporation; First Systems Corporation; FORM Foreign Reinsurance Management AG; Frontier Hotels, Inc.; Getcom, Inc.; Getty Asian Oil Company; Getty Canadian Metals, Ltd.; Getty Capital Corporation; Getty Chemical Company; Getty Crude Gathering, Inc.; Getty Fleet Corporation; Getty Gas Gathering, Inc.; Getty International, Inc.; Getty Iran Ltd.; Getty Marine Corporation; Getty Marine Services Limited; Getty Maritime, Inc.; Getty Inernational (Sinai), Inc.; Getty Oil International (Somalia), Ltd.; Getty Oil International (Spain) S.A.; Getty Oil International (Ten), Inc.; Getty Oil International (Three), Inc.; Getty Oil International (Vietnam) Inc.; Getty Oil International Exploration Company; Getty Oil Operations Company; Getty Petroleum Company; Getty Petroleum Ireland, Limited; Getty Pipe Company; Getty Pipe Line Company; Getty Pipeline, Inc.; Getty Refining and Marketing Company; Getty Reserve Oil, Inc.; Getty Rice Ranch Estates, Inc.; Getty Synthetic Fuels, Inc.; Gibson Holdings, Ltd.; Gibson Petroleum Ltd.; Grande Properties, Inc.; Halbouty Alaska Oil Company; Hanover Financial Corporation; Hanover Sales Corporation; Hawkeye Chemical Company; Huelva Pyrites, Inc.; Iberian Petroleum, Ltd.; Iricon Agency Ltd.; Mediterranean (Algeria) Oil Company; Minnehoma Corporation; Minnehoma Cotton, Inc.; Minnehoma Development, Inc.; Minnehoma Land and Farming Company; Mitsubishi Oil Company, Limited; Mohawk Crude Purchasing Company; Mohawk Petroleum Corporation, Inc.; National Fidelity Life Insurance Company; Norake Getty Exploration A/S; North Slope Gas Transmission Corporation; North Slope Pipe Line Cor-

poration; Northern Tier Pipeline Company; Nuclear Fuel Services, Inc.; Osage Pipe Line Company; Pacific Western Oil Corporation; Petroman, Inc.; Plains Pipe Line Company; Plateau Mining Company; Pontotoc Oil company; Reserve Oil and Gas Company (1979 Nameholder Company); RVO Insurance, Ltd.; RVO Petroleum Co.; Seville Metals Methanol Corporation; Getty Mineral Resources Company; Getty Minerals Company, Limited; Getty Mines, Limited; Getty Mining Company; Getty Mining (Chile), Inc.; Getty Mining (Ireland) Ltd.; Getty Mining Northwest, Limited; Getty Mining (Philippines), Inc.; Getty Mining (Portugal), Inc.; Getty Mining Pty. Ltd.; Getty Oil (Angola), Limited; Getty Oil (Britain) Limited; Getty Oil (Canada), Ltd.; Getty Oil (Canadian Operations), Ltd.; Getty Oil (Congo), Inc.; Getty Oil (Guatemala), Inc.; Getty Oil (Ivory Coast), Inc.; Getty Oil (Morocco), Inc.; Getty Oil (Mossel Bay), Ltd.; Getty Oil (Peru), Inc.; Getty Oil (Sakala), Inc.; Getty Oil (Sharjah), Inc.; Getty Oil (Sumatra), Inc.; Getty Oil (Tomori), Inc.; Getty Oil (Trinidad and Tobago), Inc.; Getty Oil (Walvis Bay) Ltd.; Getty Oil Company; Getty Oil Company Foundation; Getty Oil Company of Spain S.A.; Getty Oil Development Company, Ltd.; Getty Oil Drilling Company; Getty Oil International (Antilles) N.V.; Getty Oil International (Argentina) Inc.; Getty Oil International (Bolivia), Inc.; Getty Oil International (Caribbean) N.V.; Getty Oil International (Congo), Inc.; Getty Oil International (Equatorial Guinea), Inc.; Getty Oil International (Ghana), Inc.; Getty Oil International (Guatemala), Inc.; Getty Oil International (Indonesia), Inc.; Getty Oil International (Ireland), Ltd.; Getty Oil International (Mauritania), Inc.; Getty Oil International (Nine), Inc.; Getty Oil International (Orient), Inc.; Getty Oil International (Red Sea), Inc.; Getty Oil Corporation; Skelly Leasing Company; Skelly Oil Company (1977 Company); Texas-New Mexico Pipe Line Company; Texoma Pipe Line Company; Tide Water Oil Company (India), Limited; Tidewater Oil Company (1967 Company); Toplis and Harding, Inc.; Uinta Pipeline Corporation; Vancouver Plywood Co., Inc.; Vanply, Inc.;

Vanply of Liberia, Inc.; Welfish Mining Company; Wallace Butts Insurance Agency, Inc.; Wascana Pipe Line, Inc.; Wascana Pipe Line, Ltd.; Wesco Gas Services, Inc.; Wesco G.m.b.H.; Wesco International, Inc.; Wesco Petroleum, Ltd.; Wesco Pipe Line Company; West Shore Corporation; Western Crude Oil, Inc.; Western Crude Terminals, Inc.; Western Gravities, Inc.; Wyanot Pipe Line Company; Wyo-Cal Oil, Inc. (DBA for West Shore Corporation in California); Yong-Nam Chemical Company, Ltd.

Phillips Petroleum Company: Acurex Corporation, Aero Oil Company, Alamo Chemical Company, Alyeska Investment Company, Alyeska Pipeline Service Company, American Fertilizer & Chemical Co., American Thermoplastics Corporation, Applied Automation, Inc., Arlco, Inc., Bruin Carbon Dioxide Sales Corporation, Canyon Reef Carriers, Inc., Capital "66" Oil Company, Catalyst Resources, Inc. Chisholm Pipeline Company, Colonial Pipeline Company, Dixie Pipeline Company, East Texas Salt Water Disposal Company, Everglades Pipe Line Company, Explorer Pipeline Company, Fibers International Corporation, Fountain Oil Company, Fractionation Research, Inc., Groleco, Inc., Heat Transfer Research, Inc., Interplastic Corporation, Kaw Pipe Line Company, Kenai Lng Corporation, Metro 66 Oil Co., Inc., Papago Chemicals, Inc., Philchem Corporation, Phillips Alaska Pipeline Corporation, Phillips Australia Chemicals Pty. Ltd., Phillips Australian Oil Company, Phillips Chemical Company, Phillips Coal Company, Phillips Coal Land Management Corporation, Phillips Communications, Inc., Phillips Driscopipe, Inc., Phillips Fibers Corporation, Phillips Gas Supply Corporation, Phillips Investment Company, Phillips Marketing Properties, Inc., Phillips Natural Gas Company, Phillips Oil Company, Phillips Pacific Chemical Company, Phillips Paraxylene, Inc., Phillips Petroleum Caribbean Ltd., Phillips Petroleum Company, Phillips Petroleum Company Abidjan, Phillips Petroleum Company Andes, Phillips Petroleum Company Argentina, Phillips Petroleum Company Asia, Phillips Petroleum Company

Atlantique, Phillips Petroleum Company Bolivia, Phillips Petroleum Company Europe-Africa, Phillips Petroleum Company Far East, Phillips Petroleum Company Germany, Phillips Petroleum Company Ghana, Phillips Petroleum Company Guatemala, Phillips Petroleum Company Indonesia, Phillips Petroleum Company Iran, Phillips Petroleum Company Ireland, Phillips Petroleum Company Ivory Coast, Phillips Petroleum Company Kutai, Phillips Petroleum Company Latin America, Phillips Petroleum Company Morocco, Phillips Petroleum Company Netherlands, Phillips Petroleum Company Nicaragua, Phillips Petroleum Company Norway, Phillips Petroleum Company Offshore, Phillips Petroleum Company of the Americas, Phillips Petroleum Company Philippines, Phillips Petroleum Company PRC, Phillips Petroleum Company Spain, Phillips Petroleum Company Sudan, Phillips Petroleum Company Thailand, Phillips Petroleum Company Western Hemisphere, Phillips Petroleum Credit Company, Phillips Petroleum Disc Corporation, Phillips Petroleum Foundation, Inc., Phillips Petroleum Gas Services, Limited, Phillips Petroleum International Investment Company, Phillips Petroleum International U.K. Limited, Phillips Petroleum Marine Services, Inc., Phillips Petroleum New Zealand Ltd., Phillips Petroleum Offshore Drilling Company, Phillips Petroleum Venezuela Services Co., Philtankers, Inc., Plasticos Vanguardia S.A., Polar Lng Shipping Corporation, Polyolefins (2), Produtos Petro-Quimicous "66" Ltda., Proteina Brasileira Ltda., Quimica Venoco C.A., Arnolit-Fertighaus GmbH, Sevalco (holdings) Limited, Sevalco Limited, Sodefine, Spodco Limited, Trenwick, United Kingdom Petroleum Industry Association Limited, Venezoil, C.A., Walton Insurance Limited, Western Desert Operating Petroleum Company (WEPCO), Adelphi Property Management Limited, Applied Automation UK Limited, Arctic Lng Transportation Company, Badische-Philllips Petroleum, N.V., C.A. Venezolana Internacional De Productos Quimicos (Vipquimica), Calatrava, Empresa Para La Industria Petroquimica, S.A., Canada Western Cordage Company Limited, Cochin Refineries

Limited, Compagnie Francaise Du Carbon Black, S.A., Consorcio Industrial Brasileiro S.A. - Coninbra, Drisco, S.A. de C.V., Industrias Negromex, S.A. de C.V., Insurance & Reinsurance Brokers (Bermuda) Limited, International Energy Limited, International Petroleum Sales, Inc., Iranian Marine International Oil Company (Iminoco), Manolene (in process of being sold), Nordisk Kemi AB, Nordisk Philblack AB, Norland GmbH Fur Grundbesitz und Industrieanlagen, Norpipe a.s., Norpipe Petroleum UK Limited, Norsea Gas A/S, Norsea Gas GmbH, Norsea Pipeline Limited, The Offshore Pollution Liability Association Limited, Oil Insurance Limited, Pacific Petroleums Ltd., Petrochim, Phillips Carbon Black Company (Proprietary) Limited, Phillips Carbon Black Italiana S.p.A., Phillips Carbon Black Limited, Phillips Erdol GmbH, Phillips Extruded Product - Les Produits Extrudes Phillips Ltee, Ltd., Phillips - Imperial Petroleum Limited, Phillips Oil Company (Nigeria) Limited, Phillips Oil (GB) Limited, Phillips Oil Trading Limited, Phillips Petroleos Chile S.A., Phillips Petroleum Canada Ltd., Phillips Petroleum Chemicals, Phillips Petroleum Chemicals Espana S.A., Phillips Petroleum Chemicals U.K. Limited, Phillips Petroleum Company U.K. Ltd., Phillips Petroleum Exploration U.K., Limited, Phillips Petroleum Exploration Limited, Phillips Petroleum International A.G., Phillips Petroleum International Andina, S.A., Phillips Petroleum International Argentina, Inc., Phillips Petroleum International Australia Pty. Limited, Phillips Petroleum International Babuyan Ltd., Phillips Petroleum International Benelux (1), Phillips Petroleum International Chile Ltda., Phillips Petroleum International Corporation, Phillips Petroleum International Corporation Asia, Phillips Petroleum International Corporation Cebu, Phillips Petroleum International Corporation Congo, Phillips Petroleum International Corporation East Kalimantan, Phillips Petroleum International Corporation Egypt, Phillips Petroleum International Corporation Italy, Phillips Petroleum International Corporation Kamura, Phillips Petroleum

International Corporation Mauritania, Phillips Petroleum International Corporation Phillippines, Phillips Petroleum International Corporation Tunisia, Phillips Petroleum International Corporation Waipona, Phillips Petroleum International France, Phillips Petroleum International Gmbh, Phillips Petroleum International Inc., Phillips Petroleum International Ltd., Phillips Petroleum International Mediterranean S.A.L., Phillips Petroleum International Mindoro Ltd., Phillips Petroleum International New Zealand Limited, Phillips Petroleum International Osthandels-Gesellschaft mbH, Phillips Petroleum International Palahan Ltd., Phillips Petroleum International S.p.A., Phillips Petroleum International Samar Ltd., Phillips Petroleum International Tarakan Ltd., Phillips Petroleum Management Corporation, Phillips Petroleum Norsk A/S, Phillips Petroleum Pension Trustees Limited, Phillips Petroleum Products Limited, Phillips Petroleum Singapore Chemicals (Private) Limited, Phillips Petroleum - U.K., Limited (2), Phillips Petroquimica, S.A., Phillips Quimica, S.A. de C.V., Philmac Oils, Philmac Oils Limited, Philmac Panama Incorporated, Philmac Transport, Philships, Inc., Phillips Petroleum Worldwide Gas, Limited, Phillips Pipe Line Company, Phillips Puerto Rico Core Inc., Phillips Uranium Corporation, Pier 66 Company, The Protane Corporation, Provesta Corporation, Reproco, Inc., Revonah Spinning Mills, Rural Gas Service, The Salk Institute Biotechnology/Industrial Associates, Inc., Seadock, Inc., Seaway Pipeline, Inc., Servicetown, Inc., H.P. Smith Paper Co., Tallman Oil Co., Texas Offshore Port, Inc., Transatlantic Reinsurance Company, Wasatch Oil Corporation, White River Shale Oil Company.

FILED
AUG 5 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1835

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

UNION OIL COMPANY OF CALIFORNIA, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALABAMA

MOTION TO DISMISS

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No. 82-1835

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

UNION OIL COMPANY OF CALIFORNIA, et al.,
Appellants,

versus

RALPH P. EAGERTON, JR., as COMMISSIONER OF REVENUE OF THE STATE OF ALABAMA,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALABAMA

May it please the Court:

The Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, hereby moves pursuant to Rule 16 of the Rules of the United States Supreme Court that the appeal in this present cause as filed by the Appellants Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company be dismissed.

I. GROUNDS FOR MOTION TO DISMISS APPEAL

Appellee Eagerton's Motion to Dismiss is based upon the following grounds:

A. COLLATERAL ESTOPPEL

In the case of *Allen v. McCurry*, 449 U.S. 90 at 94, 101 S.Ct. 411 at 414, 66 L.Ed. 2d 308 (1980) this Court held:

> "The federal courts have traditionally adhered to the related doctrines of res judicata and collateral estoppel ... Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first cause. (Citation omitted). As this Court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication. (Citation omitted).
>
> In recent years, this Court has reaffirmed the benefits of collateral estoppel in particular, finding the policies underlying it to apply in contexts not formerly recognized at common law. Thus, the Court has eliminated the requirement of mutuality in applying collateral estoppel to bar relitigation of issues decided earlier in federal-court suits, (citation omitted), and has allowed a litigant who is not a party to a federal case to use collateral estoppel "offensively" in a new federal suit against the party who lost on the decided issue in the first case, (citation omitted)."

At page 2 of Appellants' *Jurisdictional Statement*, under the heading *Statement of the Case and Facts*, Union Oil Company and the other Appellants have made the following statement:

> "1980 Ala. Acts, No. 80-708 is the successor statute to 1979 Ala. Acts, No. 79-434 (hereinafter "Act 708" and "Act 434", respectively). The constitutional validity of various portions of Act 434 will be determined in those consolidated cases styled *Exxon Corporation v. Eagerton*, Supreme Court No. 81-1020, and *Exchange Oil and Gas Corporation v. Eagerton*, Supreme Court No. 81-1268. Since Act 708 retained *some* of the offending portions included in Act 434, *the question presented on this appeal is precisely the same as one question pending before this Court in connection with Appellants' challenge to Act 434.*"
> (Emphasis supplied).

Therefore Union Oil Company of California and the other Appellants herein have conceded "the question presented on the appeal is precisely the same as one question pending before this Court in connection with Appellants' challenge to Act 434".

In fact, the decision of the Supreme Court of Alabama which Appellants Union Oil Company of California, et al, are seeking to appeal to this Honorable Court specifically states: "Many of the issues that the oil company Appellants raise herein are identical to, or are variations on, the issues decided in *Eagerton v. Exchange, supra.*" (Opinion of the Supreme Court of Alabama entered December 10, 1982, Appendix A, Appellants' Brief, page 2a).

The Appellee Commissioner of Revenue submits that the *Question Presented on Appeal* portion of the present appeal is identical to question No. 3 presented in *Exchange Oil and Gas Corporation v. Ralph P. Eagerton, Jr.*, Case No. 81-1268. Appellants' footnote to the *Question Presented on Appeal* states: "Precisely the same issue was presented and is before this Court in consolidated cases *Exxon Corporation v. Ralph P. Eagerton, Jr.*, Case No. 81-1020 and *Exchange Oil and Gas Corporation v. Ralph P. Eagerton, Jr.*, Case No. 81-1268." (Appellants' *Jurisdictional Statement*, page i).

In the present appeal, Appellants Union Oil Company of California, et al. are alleging that Act No. 80-708, *Acts of Alabama*, Regular Session 1980 violates the Equal Protection Clause of the Fourteenth Amendment of the *United States Constitution*. In *Exxon Corporation v. Eagerton*, 51 U.S.L.W. 4700 (U.S. June 8, 1983), this Honorable Court in determining the constitutionality of a statute that the present Appellants have conceded is "precisely the same as the statute presently being appealed", stated:

> "Finally, we reject Appellants' equal protection challenge to the pass-through prohibition and the royalty-owner exemption. Because neither of the challenged provisions adversely affects a fundamental interest, (citations omitted), or contains a classification based upon a suspect criterion, (citations omitted), they need only be tested under the lenient standard of rationality that this Court has traditionally applied in considering equal protection challenges to regulation of economic and commercial matters. (Citations omitted).

> Under that standard a statute will be sustained if the legislature could have reasonably concluded that the challenged classification would promote a legitimate State purpose. (Citations omitted).
>
> We conclude that the measures at issue here pass muster under this standard. The pass-through prohibition plainly bore a rational relationship to the State's legitimate purpose of protecting consumers from excessive prices. Similarly, we think the Alabama Legislature could have reasonably determined that the royalty-owner exemption would encourage investment in oil or gas production. Our conclusion with respect to the royalty-owner exemption is reinforced by the fact that the provision is solely a tax measure. As we recently stated in *Regan v. Taxation with Representation of Washington*, ___ U.S. ___, ___ (1983), 'Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes.' (Citations omitted)." 51 U.S.L.W. 4700, 4705 (U.S. June 8, 1983).

From the above-quoted portion of *Exxon Corporation v. Eagerton, supra*, it is clear that the questions raised by the Appellants in the present appeal have recently been fully addressed and answered by the Supreme Court of the United States. Therefore, the Commissioner of Revenue of the State of Alabama submits that the Appellants are collaterally estopped from re-raising and re-litigating the issue they have sought to raise by this present appeal. In *Montana v.*

U.S., 440 U.S. 147 at 153, 99 S.Ct. 970 at 973, 59 L.Ed. 2d 210 (1979), this Honorable Court recognized:

> "A fundamental precept of common law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction ... cannot be disputed in a subsequent suit between the same parties or their privies ..." (Citation omitted). Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. (Citations omitted). Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. (Citations omitted). Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. (Citations omitted). To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions."

In *Montana v. U.S., supra*, this Court adopted a 3-

prong test to determine the applicability of the doctrine of collateral estoppel:

> "To determine the appropriate application of collateral estoppel in the instant case necessitates three further inquiries: First, whether the issues presented by this litigation are in substance the same as those resolved (in the prior litigation); Second, whether controlling facts or legal principles have changed significantly since (the prior decision); and finally, whether other special circumstances warrant an exception to the normal rules of preclusion." 440 U.S. 147 at 155, 99 S.Ct. 970 at 974, 59 L.Ed. 2d 210 (1979).

The Commissioner of Revenue submits that the application of the doctrine of collateral estoppel in the present appeal clearly passes the 3-pronged test enunciated in *Montana v. U.S., supra.* The issues presented in the present appeal and the facts are virtually identical to those issues and facts contained in *Exxon Corporation v. Eagerton, supra.* Secondly, the Commissioner submits that there could not have been any significant change in legal principles since June 8, 1983 to justify not applying the doctrine of collateral estoppel. Finally, the Commissioner asserts that no special circumstances have arisen which would warrant an exception to the normal rules of preclusion by collateral estopel since this Court announced its decision in *Exxon Corporation v. Eagerton, supra.*

B. MOOT

The question raised by Appellants' Union Oil Com-

pany of California, et al, in the present appeal has recently been fully considered and answered by this Honorable Court in *Exxon Corporation, et al. v. Eagerton*, 51 U.S.L.W. 4700 (U.S. June 8, 1983), and therefore is now moot.

II. CONCLUSION

In view of the foregoing arguments and cited authorities presented herein, Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, hereby moves this Honorable Court to grant his Motion to Dismiss this appeal due to the Appellants Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company being collaterally estopped from relitigating the issue presently asserted which has previously been decided, and because the question raised by the Appellants is now moot.

Respectfully submitted,

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

UNION OIL COMPANY OF CALIFORNIA, et al,
Appellants

versus

RALPH P. EAGERTON, JR., as Commissioner of Revenue of the State of Alabama,
Appellee,

PROOF OF SERVICE

I, John J. Breckenridge, Jr., as a Member of the Bar of the Supreme Court of the United States, and one of the attorneys for the Appellee Ralph P. Eagerton, Jr., as Commissioner of Revenue of the State of Alabama, hereby certify that on the 4th day of August, 1983, I served copies of the foregoing Motion to Dismiss upon all parties required to be served as follows: on Appellants herein, Union Oil Company of California, Getty Oil Company, Exchange Oil and Gas Corporation, and Phillips Petroleum Company, by depositing a copy in the United States Mail, with first-class postage prepaid, addressed to:

To Rae M. Crowe, Esquire
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To Euel A. Screws, Jr. Esquire
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No. 82-1835

IN THE

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OCTOBER TERM, 1982

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ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF ALABAMA

APPENDIX

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SUPREME COURT OF THE UNITED STATES

Nos. 81-1020 and 81-1268

EXXON CORPORATION, ET AL., APPELLANTS
81-1020 *v.*
RALPH EAGERTON, JR., COMMISSIONER OF REVENUE OF ALABAMA, ET AL.

EXCHANGE OIL AND GAS CORPORATION, ET AL., APPELLANTS
81-1268 *v.*
RALPH P. EAGERTON, JR., COMMISSIONER OF REVENUE OF THE STATE OF ALABAMA

ON APPEALS FROM THE SUPREME COURT OF ALABAMA

[June 8, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

This case concerns an Alabama statute which increased the severance tax on oil and gas extracted from Alabama wells, exempted royalty owners from the tax increase, and prohibited producers from passing on the increase to their purchasers. Appellants challenge the pass-through prohibition and the royalty-owner exemption under the Supremacy Clause, the Contract Clause, and the Equal Protection Clause.

I

Since 1945 Alabama has imposed a severance tax on oil and gas extracted from wells located in the State. Code of Ala. §40-20-1 *et seq.* The tax "is levied upon the

producers of such oil or gas in the proportion of their ownership at the time of severance, but ...shall be paid by the person in charge of the production operations." §40-20-3(a).[1] The person in charge of production operations is "authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments of such producers." §40-20-3(a). The statute defines a "producer" as "[a]ny person engaging or continuing in the business of oil or gas production," including

> "the owning, controlling, managing, or leasing of any oil or gas property or oil or gas well, and producing in any manner any oil or gas ... and ... receiving money or other valuable consideration as royalty or rental for oil or gas produced ..." §40-20-1(8).

In 1979 the Alabama Legislature enacted Act 79-434, which increased the severance tax from 4% to 6% of the gross value of the oil and gas at the point of production. Whereas the severance tax had previously fallen on royalty owners in proportion to their interests in the oil or gas produced, the amendment specifically exempted royalty owners from the tax increase:

> "Any person who is a royalty owner shall be

---

[1]The amount of tax that is due and payable constitutes "a first lien upon any of the oil or gas so produced when in the possession of the original producer or any purchaser of such oil or gas in its unmanufactured state or condition." §40-02-3(a).

> exempt from the payment of any increase in taxes herein levied and shall not be liable therefor." Acts 1979, No. 79-434, p. 687, §1, Ala. Code §40-20-2(d), *as amended.*

The amendment also prohibited producers from passing the tax increase through to consumers:

> "The privilege tax herein levied shall be absorbed and paid by those persons engaged in the business of producing or severing oil or gas only, and the producer shall not pass on the costs of such tax payments, either directly or indirectly to the consumer; it being the express intent of this act that the tax herein levied shall be borne exclusively by the producer or severer of oil or gas." Acts 1979, No. 79-434, p. 687, §1.

The amendment became effective on September 1, 1979. The pass-through prohibition was repealed on May 28, 1980. Acts 1980, No. 80-708, p. 1438.

Appellants in both 81-1020 and 81-1268 have working interests in producing oil and gas wells located in Alabama.[2] They drill and operate the wells and are responsible for selling the oil and gas extracted. Appellants are obligated to pay the landowners a percentage of the sale proceeds as royalties, the percentage depend-

---

[2]Appellants in 81-1020 are Exxon Corp., Gulf Oil Corp., and the Louisiana Land and Exploration Co. Appellants in 81-1268 are Exchange Oil and Gas Corp., Getty Oil Co., and Union Oil Co. of California.

ing upon the provisions of the applicable lease. Within any given production unit, there may be tracts of land which the owners of the land have leased to nonworking interests, who are also entitled to a share of the sale proceeds. Appellants were parties to contracts providing for the allocation of severance taxes among themselves, the royalty owners, and any non-working interests in proportion to each party's share of the sale proceeds. Appellants were also parties to sale contracts that required the purchasers to reimburse them for any and all severance taxes on the oil or gas sold.

After paying the 2% increase in the severance tax under protest, appellants and eight other oil and gas producers filed suit in the Circuit Court of Montgomery County, Alabama, seeking a declaratory judgment that Act 79-434 was unconstitutional and a refund of the taxes paid under protest. The Circuit Court ruled in favor of appellants, concluding that both the royalty-owner exemption and the pass-through prohibition violate the Equal Protection Clause and the Contract Clause, and that the pass-through prohibition is also preempted by the Natural Gas Policy Act of 1978 (NGPA), 15 U. S. C. §3301 *et seq.* (Supp. IV). Although Act 79-434 contained a severability clause, the court held the entire Act invalid and ordered appellee, the Commissioner of Revenue of the state of Alabama, to refund the taxes paid under protest. The Supreme Court of Alabama reversed, holding Act 79-434 valid in its entirety. 404 So. 2d 1 (1981).

Appellants appealed to this Court under 28 U. S. C. §1257(2). We noted probable jurisdiction. 456 U. S. 970

(1982). We now affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

II

We deal first with appellants' contention that the application of the pass-through prohibition to gas was preempted by federal law.[3] The applicable principles of preemption were recently summarized in *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n*, ___ U. S. ___, ___ (1983):

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[3]The Supremacy Clause of the Constitution provides that "[t]his Constitution, and the laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the contrary notwithstanding." Art. VI, cl. 2.

Although appellants in 81-1268 also contend that the application of the pass-through prohibition to oil was preempted by the Emergency Petroleum Act of 1973 (EPAA), 15 U. S. C. §*751 et seq.* (1976 ed & Supp. IV), and the regulations promulgated thereunder, we conclude that we have no jurisdiction to consider this contention. The decision below does not discuss this issue, and when "The highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Fuller v. Oregon*, 417 U. S. 40, 50 n. 11 (1974), quoting *Street v. New York*, 394 U. S. 576, 582 (1969). No such showing has been made here. Although appellants in 81-1268 have represented to this Court that the trial court held the pass-through prohibition to be preempted by the EPAA, Juris. Stmt. at 3, and examination of the trial court opinion reveals that in fact the court made no mention of the EPAA. Nor does anything in the record before us indicate that this issue was raised in the trial court. Appellants did address the EPAA in their brief before the Supreme

> "Absent explicit preemptive language, Congress intent to supercede state law altogether may be found from a 'scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' 'because the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,' or 'because the object sought to be obtained by federal law and the character of obligations imposed by it may reveal the same purpose.'

Court of Alabama, Brief of Appellees Exchange Oil and Gas Corp., Getty Oil Co., Placid Oil Co., Union Oil Co. of California, at 51-53, but that court did not pass on the issue. Under these circumstances we have no jurisdiciton to consider whether the EPAA preempted the application of the pass-through prohibition to oil, for it does not affirmatively appear that that issue was decided below. *Bailey v. Anderson*, 326 U.S. 203, 206-207 (1945). The general practice of the Alabama appellate courts is not to consider issues raised for the first time on appeal. See, *e. g.*, *State v. Newberry*, 336 So. 2d 181, 182 (1976); *State v. Graf*, 189 So. 2d 912, 913 (1966); *Burton v. Burton*, 379 So. 2d 617, 618 (Ct. Civ. App. 1980); *Crews v. Houston City Dept. of Pensions & Security*, 358 So. 2d 451, 455 (Ct. Civ. App. (1978), cert. denied, 358 So. 2d 456.

Appellants in 81-1268 have also burdened this Court with a labored argument that they were denied due process by the Supreme Court of Alabama's refusal to consider the legislative history of the 1979 amendments to the State severance tax, a history which, according to appellants, shows that those amendments were intended to apply only to certain wells located in one county in the State and not to apply statewide. Suffice it to say that the weight to be given to the legislative history of an Alabama statute is a matter of Alabama law to be determined by the Supreme Court of Alabama.

> *Fidelity Federal Savings & Loan Assn. v. de la Cuesta*, ___ U. S. ___, ___ (1982); *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). Even where Congress has not entirely displaced state regulation in a specific area, state law is preempted to the extent that it actually conflicts with federal law. Such a conflict arises when 'compliance with both federal and state regulations is a physical impossibility,' *Florida Lime & Avocado Growers, Inc. v. Paul, 373 U. S. 132, 142-143 (1963), or where state law 'stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.' Hines v. Davidowitz*, 312 U. S. 52, 67 (1941)."

Appellants contend that the pass-through prohibition was in conflict with §110(a) of the NGPA, 15 U. S. C. §3320(a) (Supp. V), which provides in pertinent part as follows:

> "***a price for the first sale of natural gas shall not be considered to exceed the maximum lawful price applicable to the first sale of such natural gas under this part if such first sale price exceeds the maximum lawful price to the extent necessary to recover—
>
> (1) State severance taxes attributable to the production of such natural gas and borne by the seller***."

We agree with the Supreme Court of Alabama[4] that the pass-through prohibition did not conflict with this provision. On its face §110(a) of the NGPA does not give any seller the affirmative right to include in his price an

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[4]See 404 So. 2d, at 6:
"Nowhere in that section [§3320 of the NGPA] is it stated that the oil companies are entitled to 'pass-through' increases on state severance taxes. Rather, the Act merely provides that the lawful ceiling on the first sale at the wellhead may be raised if a severance tax is imposed by the states. The two Acts are aimed at entirely different purposes. In other words, although it would be perfectly permissible for the oil and gas companies to raise the price for the first sale of natural gas, subject to the limitations of the Natural Gas Policy Act, all that Act No. 79-434 requires is that the increase in severance tax mandated by that Act be borne by the producer or severer of the oil or gas."

Relying on this passage, appellee contends that the pass-through prohibition did not bar a producer from increasing its price by an amount equal to the increase in the severance tax, provided that the producer did not label that increase a tax:
"The Commisisoner believes that the seller may include in the lawful maximum price an amount equal to Alabama's severance taxes borne by the seller resulting from the production of natural gas. The Commissioner believes that it was the intent of the Alabama Legislature in adopting the pass-through prohibition that it did not want to be perceived as levying an additional tax on the consumer. Therefore it prohibited anyone from passing along the increase levied by Act 79-434 *as a tax*." Brief at 16-17 (emphasis in original).

We do not agree with appellee that the Supreme Court of Alabama interpreted the pass-through prohibition to leave sellers free to pass through the tax increase so long as they did not tell their customers that that is what they were doing. The statute contains no language that would suggest this limitation, and as we understand the opinion below, the point of the passage relied upon by appellee was only that the pass-through prohibition did not conflict with federal law.

amount necessary to recover state severance taxes. It simply provides that a seller who does include such an amount in his price shall not be deemed to have exceeded the federal price ceiling if he would not have exceeded it had that amount not been included. Nothing in the legislative history of the NGPA has been called to our attention to indicate that §110(a) was intended to have a greater effect than its language would indicate.[5]

Although the pass-through prohibition thus was not in conflict with §110(a) of the NGPA, we nevertheless conclude that it was preempted by federal law insofar as it applied to sales of gas in interstate commerce. To that extent, the pass-through prohibition represented an attempt to legislate in a field that Congress has chosen to occupy. The Natural Gas Act (Gas Act), 52 Stat. 821, *as amended*, 15 U. S. C. §§717-717w (1976 ed. & Supp. III), was enacted in 1938 "to provide the Federal Power Commission, now the FERC, with authority to regulate the wholesale pricing of natural gas in the flow of interstate commerce from wellhead to delivery to consumers." *Maryland v. Louisiana*, 451 U. S. 725, 748 (1981). As we have previously recognized, *e. g.*, *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, 682-683 (1954); *id.*, at 685-687 (Frankfurter, J., concurring), the Gas Act was intended to occupy the field of wholesale

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[5]Although the United States and the Federal Energy Regulatory Commission (FERC) point in their *amicus* brief to the statement in the Conference Report that "[a]ll ceiling prices under this Act are exclusive of State severance taxes borne by the seller. . . ," H. R. Conf. Rep. no. 95-1752, 95th Cong., 2d Sess. 90 (1978), we do not see how this statement supports their position that the pass-through prohibition was in conflict with §110(a).

sales of natural gas in interstate commerce, a field which had previously been left largely unregulated as a result of the absence of federal action and decisions of this Court striking down state regulation of sales of natural gas in interstate commerce. The committee reports on the bill that became the Gas Act clearly evidence this intent:

> "[S]ales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) ... have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. *The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act.*" H. R. Rep. No. 709, 75th Cong., 1st Sess. 1-2; S. Rep. No. 1162, 75th Cong., 1st Sess. 1-2 (citations ommitted) (emphasis added).

The Alabama pass-through prohibition trespassed upon FERC's authority over wholesale sales of gas in interstate commerce, for it barred gas producers from increasing their prices to pass on a particular expense — the increase in the severance tax — to their purchasers. Whether or not producers should be permitted to recover this expense from their purchasers is a matter within the sphere of FERC's regulatory authority. See *FPC v. United Gas Pipe Line Co.*, 386 U. S. 237, 243 (1967) (emphasis added):

> "One of [the FPC's] statutory duties is to determine just and reasonable rates which will be

> sufficient to permit the company to recover its costs of service and a reasonable return on its investment. Cost of service is therefore a major focus of inquiry. *Normally included as a cost of service is a proper allowance for taxes ...*"

Here, as in *Maryland v. Louisiana*, the state statute "interfere[d] with the FERC's authority to regulate the determination of the proper allocation of costs associated with the sale of natural gas to consumers." 451 U. S., at 749. Just as the statute at issue in *Maryland v. Louisiana* was preempted because it effectively "shift[ed] the incidence of certain expenses ... to the ultimate consumer of the processed gas without the prior approval of the FERC," *id.*, at 750, Alabama's pass-through prohibition was preempted, insofar as it applied to sales of gas in interstate commerce, because it required that certain expenses be absorbed by producers.

We reach a different conclusion with respect to the application of the pass-through prohibition to sales of gas in intrastate commerce.[6] Although §105(a) of the

[6]The parties stipulated that a substantial portion of the gas extracted by appellants was sold in interstate commerce. JA 78, 184-185. Because the trial court concluded that the pass-through prohibition was in conflict with §110(a) of the NGPA, it did not determine how much of the taxes at issue in this case were levied on gas sold in intrastate and interstate commerce. If, on remand, when the Supreme Court of Alabama inquires into the question of severability, see *infra*, at 20, that court holds that the Alabama Legislature would have intended to impose the tax increase on the severance of gas if and only if the increase could not be passed through to consumers when the gas is sold, such a determination may have to be made.

NGPA extended federal authority to control prices to the intrastate market, 15 U. S. C. §3315(a), Congress also provided that this extension of federal authority did not deprive the States of the power to establish a price ceiling for intrastate producer sales of gas at a level lower than the federal ceiling. Section 602(a) of the NGPA, 15 U. S. C. §3432(a) (Supp. IV), states that

> "[n]othing in this chapter shall affect the authority of any State to establish or enforce any maximum lawful price for the first sale of natural gas produced in such State which does not exceed the applicable maximum lawful price, if any, under subchapter I of this chapter."

See *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, ___ U. S. ___, ___ (1983) (in enacting the NGPA, "Congress explicitly envisioned that the States would regulate intrastate markets in accordance with the overall national policy").

Since a State may establish a lower price ceiling, we think it may also impose a severance tax and forbid sellers from passing it through to their purchasers. For sellers charging the maximum price allowed by federal law, a State tax increase coupled with a pass-through prohibition will not differ in practical effect from a State tax increase coupled with the imposition of a State price ceiling imposed by federal law prior to the tax increase. In both cases sellers are required to absorb expenses that they might be able to pass through to their customers absent the State restrictions. Given the absence of any express preemption provision in the NGPA and Con-

gress' express approval of one form of state regulation, we do not think it can fairly be inferred that Congress contemplated that the general scheme created by the NGPA would preclude another form of state regulation that is no more intrusive.[7]

We conclude that the pass-through prohibition was preempted by federal law insofar as it applied to sales of gas in interstate commerce, but not insofar as it applied to producer sales of gas in intrastate comemrce.

III

We turn next to appellants' contention that the royalty-owner exemption and the pass-through prohibition impaired the obligations of contracts in violation of the Contract Clause.[8]

A

Appellants' Contract Clause challenge to the royalty-owner exemption fails for the simple reason that there is nothing to suggest that that exemption nullified any

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[7]We note that this case does not involve any attempt by a State to prohibit gas producers from passing through the cost of a factor of production such as labor or machinery. Such as labor or machinery. Such a prohibition might raise additional considerations not present here because of the inducement it would create for producers to shift away from the factor of production to which the pass-through prohibition applied.

[8]The Contract Clause provides that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts. ..." U. S. Const., Art. I, §10, cl. 1.

contractual obligations of which appellants were the beneficiaties.[9] The relevant provision of Act 79-434 states that "[a]ny person who is a royalty owner shall be

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[9]The contracts into which appellants had entered appear to entitle them to reimbursement from the royalty owners for a share of any severance tax paid by appellants in proportion to the royalty owners' interest in the oil or gas, regardless of whether state law imposes that tax on the producer or on the royalty owner. Appellants cite the following contractual provisions as typical of the agreements which they contend are impaired by the royalty-owner exemption:
"Lesser shall bear and pay, and there shall be deducted from the royalties due hereunder, Lessor's proportionate royalty share of:
"(a) All applicable severance, production and other such taxes levied or imposed upon production from the leased premises." JA76-77.
"LESSOR AND LESSEE shall bear in proportion to their respective participation in the production hereunder, all taxes elvied on minerals covered hereby or any part thereof, or on the severance or production thereof, and all increases in taxes on the lease premises or any part thereof." JA184. These provisions would seem to entitle appellants to recover from the royalty owners a portion of the tax increase in proportion to the royalty owners' interests in the proceeds of the oil or gas sold by appellants, regardless of the legal incidence of the tax increase.

Even if these contractual provisions were to be interpreted to entitle appellants to reimbursement only for that portion of the severance tax which state law itself imposed on the royalty owners, appellants would still have no objection under the contract Clause. In that event, the increase in the severance tax would be absorbed by appellants not because the State has nullified any contractual obligation, but simply because the provisions as so interpreted would impose no obligation on the royalty owners to reimburse appellants for the tax increas.
Since appellants have not shown that the royalty-owner exemption affects anything other than the legal incidence of the tax increase, their contention that the exemption is preempted by the Natural Gas Act and the NGPA is plainly without merit.

exempt from the payment of any increase in taxes levied and shall not be liable therefor." On its face this portion of the Act provides only that the legal incidence of the tax increase does not fall on royalty owners, i. e., the State cannot look to them for payment of the additional taxes. In contrast to the pass-through prohibition, the royalty-owner exemption nowhere states that producers may not shift the burden of the tax increase in whole or in part to royalty owners. Nor is there anything in the opinion below to suggest that the Supreme Court of Alabama interpreted the exemption to have this effect. We will not strain to reach a constitutional question by speculating that the Alabama courts might in the future interpret the royalty-owner exemption to forbid enforcement of a contractual arrangement to shift the burden of the tax increase. See *TVA v. Ashwander*, 297 U. S. 288, 346-347 (1936) (Brandeis, J., concurring).

B

Unlike the royalty-owner exemption, the pass-through prohibition did restrict contractual obligations of which appellants were the beneficiaries. Appellants were parties to sale contracts that permitted them to include in their prices any increase in the severance taxes that they were required to pay on the oil or gas being sold.[10] The contracts were entered into before the pass-through prohibition was enacted and their terms

[10]For exmaple, appellant Union Oil Co. was a party to a contract concerning oil under which the purchaser was required to reimburse it for "100 percent of the amount by which any severance taxes paid by seller are in excess of the rates of such taxes levied as of April 1, 1976." JA184.

extended through the period during which the prohibition was in effect. By barring appellants from passing the tax increase through to their purchasers, the pass-through prohibition nullified *pro tanto* the purchasers' contractual obligations to reimburse appellants for any severance taxes.

While the pass-through prohibition thus affects contractual obligations of which appellants were the beneficiaries, it does not folow that the prohibition constituted a "Law impairing the Obligations of Contracts" within the meaning of the Contract Clause. See *United States Trust Co. v. New Jersey*, 431 U. S. 1, 21 (1977). "Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.' " *Energy Reserves Group v. Kansas Power & Light Co., supra*, at ____, quoting *Home Bldg. & Loan Assn. v. Blaisdell*, 290 U. S. 398, 434 (1934). This Court has long recognized that a statute does not violate the Contract Clause simply because it has the effect of restricting, or even barirng altogether, the performance of duties created by contracts entered into prior to its enactment. See *Allied Structural Steel Co. v. Spannaus*, 438 U. S. 234, 241-242 (1978). If the law were otherwise, "one would be able to obtain immunity from state regulation by making private contractual arrangements." *United States Trust Co. v. New Jersey, supra*, at 22.

The Contract Clause does not deprive the States of their "broad power to adopt general regulatory measures without being concerned that private contracts will be

impaired, or even destroyed, as a result." *United States Trust Co. v. New Jersey, supra,* at 22. As Justice Holmes put it, "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity fo the subject matter." *Hudson Co. v. McCarter,* 209 U. S. 349, 357 (1908) (Holmes, J.).[11] Thus, a state prohibition law may be applied to contracts for the sale of beer that were valid when entered into, *Beer Co. v. Massachusetts,* 97 U. S. 25 (1878), a law barring lotteries may be applied to lottery tickets that were valid when issued, *Stone v. Mississippi,* 101 U. S. 814 (1880), and a workmen's compensation law may be applied to employers and employees operating under pre-existing contracts of employment that made no provision for work-related injuries, *New York Central*

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[11]This point was aptly stated in an early decision holding that a statute prohibiting the issuance of notes by unincorporated banking associations did not violate the Contract Clause by preventing the performance of existing contracts entered into by members of such associations:

"[I]t is said that the members had formed a contract between themselves, which would be dissolved by the stoppage of their business. And what then? Is that such a violation of contracts as is prohibited by the Constitution of the United States? Consider to what such a construction would lead. Let us suppose, that in one of the states there is no law agianst gaming, cock-fighting, horse-racing, or public masquerades, and tat companies should be formed for the purpose of carrying on these practices. And suppose, that the legislature of that state, being seriously convinced of the pernicious effect of these institutions, should venture to interdict them: will it be seriously contended, that the Constitution of the United States has veen violated?" *Myers v. Irwin,* 2 S. & R. (Pa.) 367, 372 (1816).

R. Co. v. White, 243, U. S. 188 (1917).[12]

Like the laws upheld in these cases, the pass-through prohibition did not prescribe a rule limited in effect to contractual obligations or remedies, but instead imposed a generally applicable rule of conduct designed to advance "a broad societal interest," *Allied Structural Steel Co., supra* at 249: protecting consumers from excessive prices. The prohibition applied to all oil and gas producers, regardless of whether they happened to be parties to sale contracts that contained a provision permitting them to pass tax increases through to their purchasers. The effect of the pass-through prohibition on existing contracts that did contain such a provision was incidental to its main effect of shielding consumers form the burden of the tax increase. Cf. *Henderson Co. v. Thompson*, 300 U. S. 258, 266 (1937); *Beer Co. V. Massachusetts, supra*, at 32.

Because the pass-through prohibition imposed a

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[12]See generally *Home Bldg. & Loan Assn. v. Blaisdell, supra*, at 436-437; *id.*, at 475-477 (Sutherland, J., dissenting); *Dillingham v. McLaughlin*, 264 U. S. 370, 374 (1924) ("The operation of reasonable laws for the protection of the public cannot be headed off by making contracts reaching into the future.") (Holmes, J.); *Manigault v. Springs*, 199 U. S. 473, 480 (1905) ("parties by entering into contracts may not estop the legislature from enacting laws intended for the public good"); *Ogden v. Saunders*, 25 U. S. 213, 291 (1827) (when "laws are passed rendering that unlawful, even incidentally, which was lawful at the time of the contract ... it is the government that puts an end to the contract, and yet no one ever imagined that it thereby violates the obligation of contract"); Hale, The Supreme Court and the Contract Clause: II, 57 Harv. L. Rev. 621, 671-674 (1944)

generally applicable rule of conduct, it is sharply distinguishable from the measures struck down in *United States Trust Co. v. New Jersey*, *supra*, and *Allied Structural Steel Co. V. Spannaus*, *supra*. *United States Trust Co.* involved New York and New Jersey statutes whose sole effect was to repeal a convenant that the two States had entered into with the holders of bonds issued by The Port Authority of New York and Jersey.[13] Similarly, the statute at issued in *Allied Structural Steel Co.* directly " 'adjust[ed] the rights and responsibilities of contracting parties.' " 438 U. S., at 244, quoting *United States Trust Co. v. New Jersey*, *supra*, at 22. The statute required a private employer that had contracted with its employees to provide pension benefits to pay additional benefits, beyond those it had agreed to provide, if it terminated the pension plan or closed a Minnesota office. Since the statute applied only to employers that had entered into pension agreements, its sole effect was to alter contractual duties. Cf. *Worthen Co. v. Kavanaugh*, 295 U. S. 56 (1935) (statute which drastically limited the remedies available to mortgagees held invalid under the Contract Clause).

Alabama's power to prohibit oil and gas producers from passing the increase in the severance tax on to their purchasers is confirmed by several decisions of this Court rejecting Contract Clause challenges to state rate-setting schemes that displaced any rates previously

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[13]The statutes under review in *United States Trust Co.* also implicated the special concerns associated with a State's impairment of its own contractual obligations. See 431 U. S., at 25-28; *Energy REserves Group v. Kansas Power & Light Co.*, *supra*, at ____ and n. 14.

established by contract. In *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U. S. 109 (1937), it was held that a party to a long-term contract with a utility could not invoke the Contract Clause to obtain immunity from a state public service commission's imposition of a rate for steam heating that was higher than the rate established in the contract. The Court declared that "the State has power to annul and supercede rates previously established by contract between utilities and their customers." *Id.*, at 113 (footnote omitted). In *Union Dry Goods Co. v. Georgia Public Service Corp.*, 248 U. S. 372 (1919), the Court rejected a Contract Clause challenge to an order of a state commission setting the rates that could be charged for supplying electric light and power, nowithstanding the effect of the order on pre-existing contracts. *Accord, Stephenson v. Binford*, 287 U. S. 251 (1932) (upholding law which barred private contract carriers from using the highways unless they charged rates which might exceed those they had contracted to charge).

Producers Transportation Co. v. R. Comm'n, 251 U. S. 228 (1920), is particularly instructive for present purposes. In that case the Court upheld an order issued by a state commission under a newly enacted statute empowering the commission to set the rates that could be charged by individuals or corporations offering to transport oil by pipeline. The Court rejected the contention of a pipeline owner that the statute could not override preexisting contracts:

> "That some of the contracts . . . were entered into before the statute was adopted or the order made

> is not material. A common carrier cannot by making contracts for future transportation or by mortgaging its property or pledging its income prevent or postpone the exertion by the State of the power to regulate the carrier's rates and practices. Nor does the contract clause of the Constitution interpose any obstacle to the exertion of that power." *Id.*, at 232.

There is no material difference between *Producers Transportation Co.* and the case before us. If a party that has entered into a contract to transport oil is not immune from subsequently enacted state regulation of the rates that may be charged for such transportation, parties that have entered into contracts to sell oil and gas likewise are not immune from state regulation of the prices that may be charged for those commodities. And if the Contract Clause does not prevent a State from dictating the price that sellers may charge their customers, plainly it does not prevent a State from requiring that sellers absorb a tax increase themselves rather than pass it through to their customers. If one form of state regulation is permissible under the Contract Clause notwithstanding its incidental effect on pre-existing contracts, the other form of regulation must be permissible as well.[14]

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[14]Our conclusion is buttressed by the fact that appellants operate in industries that have been subject to heavy regulation. See *Energy Reserves Group v. Kansas Power & Light Co., supra*, at ___ ("Price regulation existed and was foreseeable as the type of law that would alter contractual obligations."); *Veix v. Sixth Ward Bldg & Loan Assn.*, 310 U. S. 32, 38 (1940) ("When he purchased into an

Finally, we reject appellants' equal protection challenge to the pass-through prohibition and the royalty-owner exemption. Because neither of the challenged provisions adversely affects a fundamental interest, see, *e. s., Dun v. Blumstein*, 405 U. S. 330, 336-342 (1972), *Shapiro v. Thompson*, 394 U. S. 618, 629-631 (1969), or contains a classification based upon a suspect criterion, see, *e. g., Graham v. Richardson*, 403 U. S. 365, 372 (1971); *McLaughlin v. Florida*, 379 U. S. 184, 191-192 (1964), they need only be tested under the lenient

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enterprise already regulated in the particular to which he now objects, he purchased subject to further legislation upon the same topic.").

With respect to gas, see *supra*, at 8-10; *Energy Reserves Group v. Kansas Power & Light Co., supra*, at ____ — ____ . During the time the pass-through prohibition was in effect, the federal government controlled the prices of crude oil under the Emergency Petroleum Allocation Act (EPAA), 15 U. S. C. 751 *et seq.* (1976 ed. & Supp. IV). Regulations promulgated under the EPAA established maximum prices for most categories of crude oil. 10 CFR 212, Subpart D—Producers of Crude Oil, 212.71 *et seq.*

Appellants' reliance on *Barwise v. Sheppard*, 299 U. S. 33 (1936), is misplaced. In *Barwise* the owners of royalty interests challenged a Texas statute that imposed a new tax on oil production, which was to be borne "ratably by all interested parties including royalty interests." The statute authorized the producers to pay the tax and withhold from any royalty owners their proportionate share of the tax. The royalty owners in *Barwise* were parties to contracts that entitled them to specified shares of the oil produced by their lessee and required the lessee to deliver the oil "free of cost." *Id.*, at 35. They contended that the statute, by authorizing the lessee to deduct their portion of the tax from any payments due them, impermissibly impaired the lessee's obligation to deliver the oil "free of cost." This Court concluded that the statute did not run afoul of the Contract Clause:

"[T]he lease was made in subordination to the power of the State to

standard of rationality that this Court has traditionally applied in considering equal protection challenges to regulation of economic and commercial matters. See, *e. g., Western & Southern Life Ins. Co. v. State Board of Equalization*, 451 U. S. 648, 668 (1981); *Minnesota v. Clover Leaf Cemetery Co.*, 449 U. S. 456, 461-463 (1981); *Kotch v. Board of River Pilot Comm'rs*, 330 U. S. 552, 564 (1947). Under that standard a statute will be sustained if the legislature could have reasonable oencluded that the challenged classification would promote a legitimate state purpose. See, *e. g., Western & Southern Life Ins. Co., supra*, at 668; *Clover Leaf Cemetery Co., supra*, at 461-462, 464.

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tax the production of oil and to apportion the tax between the lessors and the lessee. ... Plainly no stipulation in the lease can be of any avail as aginst the power of the state to impose the tax, prescribe who shall be under a duty to the state to pay it, and fix the time and mode of payment. And this is true even though it be assumed to be admissible for the lessors and lessee to stipulate as to who, as between themselves, shall ultimately bear the tax." *Id.*, at 40.

We reject appellant's assertion that the last sentence of this quotation was meant to indicate that the statute would have violated the Contract Clause if, instead of simply specifying the legal incidence of the tax, it had nullified an agreement as to who would ultimately bear the burden of the tax. We think the thrust of the sentence was simply that even though the law left the lessors and the lessee free to allocate the ultimate burden of the tax as they saw fit, no agreement between them could limit the State's power to decide who must pay the tax and to specify the time and manner of payment.

Barwise is relevant to this case only insofar as it confirms Alabama's power to decide that no part of the legal incidence of the increase in the severance tax would fall on owners of royalty interests. See Part III—A, *supra*.

We conclude that the measures at issue here pass muster under this standard. The pass-through prohibition plainly bore a rational relationship to the State's legitimate purpose of protecting consumers from excessive prices. Similarly, we think the Alabama Legislature could have reasonably determined that the royalty-owner exemption would encourage investment in oil or gas production. Our conclusion with respect to the royalty-owner exemption is reinforced by the fact that that provision is solely a tax measure. As we recently stated in *Regan v. Taxation with Representation of Washington*, ___ U. S. ___, ___ (1983), "Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes." See *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356, 359 (1973); *Allied Stores of Ohio v. Bowers*, 358 U. S. 522, 526-527 (1959).

V

For the foregoing reasons, we conlude that the application of the pass-through prohibition to sales of gas in interstate commerce was preempted by federal law, but e uphold both the pass-through prohibition and the royalty-owner exemption against appellants' challenges under the Contract Clause and the Equal Protection Clause. Since the severability of the pass-through prohibiton from the remainder of the 1979 amendments is a matter of state law, we remand to the Supreme Court of Alabama for that court to determine whether the partial invalidity of the pass-through prohibition entitles appellants to a refund of some or all of the taxes paid under protest. See note 6, *supra*, Accordingly, the

judgment of the Supreme Court of Alabama is affirmed in part, reversed in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.